

**AN ASSESSMENT OF THE IMPACT OF LAND USE  
REGULATIONS AND POLICIES  
ON LAND UTILISATION IN  
MOMBASA MUNICIPALITY.**

BY

NGETI, REUBEN (B.A. Hons)

This thesis has been presented in partial fulfilment of the requirement for the degree of Master of Arts, in the Department of Urban and Regional Planning, Faculty of Architecture Design and Development, University of Nairobi.

July, 1997.

UNIVERSITY OF NAIROBI  
ADD LIBRARY

UNIVERSITY OF NAIROBI LIBRARY



0238206 7

**DECLARATION**

This thesis is my original work and has not been presented for any other degree in any other university.

SIGNED...  .....

**Ngeti, R.**

**(CANDIDATE)**

This Thesis has been submitted for examination with my approval as the university supervisor.

SIGNED.....

**Dr. JASON MOCHACHE.**

**(SUPERVISOR)**

DEDICATION

I wish to express my sincere thanks to all those who supported me in one way or another, in the writing up of the work of knowledge used in this paper.

First I would like to thank my parents, through the amount of love and unconditional support they gave me a quantity of knowledge and resources. My own personal knowledge and skills, however, are the result of my own hard work and dedication.

**DEDICATION**

**This work is dedicated to my Mom, my sister Christine and my brother Liverson for their love, encouragement and prayers.**

## ACKNOWLEDGEMENT

I wish to express my sincere thanks to all those who contributed essentially in one way or another, to the building up of the body of knowledge used in this work.

First I would like to thank the government, through the ministry of lands and settlement for awarding me a scholarship to undertake this programme. My most sincere gratitude go to my supervisor, Dr. Jason Mochache, whose professional and untiring advice and orderly marshalling of my research made this work a success. I am also greatly indebted to all the members of staff of D.U.R.P, particularly Dr. Elijah Ndegwa, Dr. Isaac Karanja, and Mr. Zack Maleche for their information and experience relating to the immense range of issues which were the concern of my work.

I warmly thank the officials of Mombasa municipal council for the assistance and interest they showed in my work. To Mr. Salim Swaleh, the provincial physical planning officer, I say *shukran* for his co-operation and wide range of information I accessed through him.

Finally, I would like to thank Ms. Joyce Mwangi who patiently and accurately typed this thesis from the original manuscript.

To my mother who sacrificed and denied herself leisure to see me through my education, I say *CHAWUCHA MBAA*.

## ABSTRACT

Land use regulations in developing countries often fail to achieve greater efficiency and equity in the use of urban land. As a result, plans often bear little or no relation to the peoples needs and wishes and they are in any case distorted by limited implementation. These problems are exacerbated, particularly in the face of rapid change, by lack of consistent overall policy framework and mechanisms for resolving conflicts between different objectives.

This study examines the impact of land use regulations and policies on land utilisation in Mombasa municipality and the focus was on the problem of uncontrolled developments in the municipality in relation to the existing land use control and policies. An assumption was made that the regulatory policies have been the main influence on the emerging development pattern in Mombasa. It was also assumed that the uncoordinated developments might have been caused by the prevailing land tenure system.

The study's objectives were thus: to find out the role land use regulations and policies have played in the emergent urban development structure of Mombasa; to find out the level of involvement of the municipality in development control over Mombasa's past and present land use structure; and ultimately to propose a workable approach to utilisation of land use regulations in developing a sustainable urban structure in Mombasa.

The problem has been studied by looking at the historical developments of the town, the nature of regulatory policies and other planning legislations, and the capacity of the council to manage (use and

control), and administer (allocate, register, and lease) land. Primary source of data included a field survey where a critical examination of the physical developments in the municipality was done. Interview schedules and household questionnaires were also administered using a random sampling procedure.

It was found out that the existing regulatory policies have been ineffective in guiding development in the municipality and that the existing land tenure system is a constraint to orderly development of the town. Out of the critical assessment of the above issues and the findings of the study, recommendations were made. The important conclusions made were that:

- 1) The historical development of Mombasa has influenced present development pattern.
- 2) It is difficult to control development on private land.
- 3) Inadequate finance and manpower coupled with inefficient land management and administration by the council are major constraints to development control.
- 4) The obsolete, rigid and inapplicable nature of control legislation has made development control impossible, and, that
- 5) Absence of advisory physical development plans for the whole or part of the town compounds the problem.

The study recommends that there is an urgent need to prepare a physical development plan(s) for the town, revise the regulatory policies and the planning legislation and institute more stringent legal measures which should be enforced in collaboration with community.

## TABLE OF CONTENTS

Declaration	i
Dedication	ii
Acknowledgement	iii
Abstract	iv
Contents	vi
List of Tables	x
List of Figures	xi
List of Plates	xii

### CHAPTER ONE

1.0.0	Introduction	1
1.1.0	Problem Statement	2
1.2.0	Justification of Study	5
1.3.0	Literature Review	6
1.4.0	Objectives of Study	8
1.5.0	Study Assumptions	8
1.6.0	Study Methodology	9
1.6.1	Sampling Procedure	10
1.6.2	Study Limitations	11
1.7.0	Conceptual Framework	12
1.8.0	Operational Definitions	13

### CHAPTER TWO

2.0.0	Introduction	15
2.1.0	Background Information of Mombasa	15

2.2.0	Situation and Physiographic Features . . . . .	17
2.3.0	Demographic and Settlement Pattern . . . . .	18
2.3.1	Population Distribution and Density . . . . .	19
2.4.0	History of Planning in Mombasa . . . . .	20
2.4.1	Housing and Physical Planning . . . . .	21
2.4.2	The 1926 Town Planning Scheme . . . . .	21
2.5.0	The Study Area: Mombasa Mainland North . . . . .	25
2.6.0	Population Distribution . . . . .	26
2.6.1	Population Growth . . . . .	26
2.7.0	Residential Land Use Development . . . . .	27
2.7.1	Housing at Mainland North . . . . .	27
2.7.2	Swahili Housing . . . . .	28
2.8.0	Planning Standards for the Area . . . . .	33
2.8.1	Building Standards and Land Use Control . . . . .	35
2.8.2	Relevance of Housing Standards . . . . .	36
2.8.3	The Basis of Standards . . . . .	37
2.8.4	Standards Enforcement in the Study Area . . . . .	39
2.9.0	The Village Layout System in Mombasa . . . . .	40
<b>CHAPTER THREE</b>		
3.0.0	Physical Planning And Development Control in Mombasa . . . . .	44
3.1.0	The Ideology of Control . . . . .	46
3.2.0	The Legal Basis of Development Control . . . . .	48
3.3.0	Rationale for Control of Urban Land Use . . . . .	50
3.3.1	Rationale for Government Intervention . . . . .	51



3.3.2	Public Development . . . . .	52
3.4.0	Decentralised Decision Making on Land Use Control Measures . . . . .	53
3.4.1	Public Participation and the Private Sector . . . . .	54
3.5.0	Traditionally-Based Organisations and Development Control . . . . .	55
3.6.0	Conclusions . . . . .	56

#### CHAPTER FOUR

4.0.0	Review of Land Use Control Mechanisms . . . . .	58
4.1.0	Introduction . . . . .	58
4.1.1	Zoning . . . . .	59
4.1.2	Early Zoning Ordinances . . . . .	60
4.1.3	Modern Zoning Ordinances . . . . .	60
4.1.4	Problems Associated With Zoning . . . . .	62
4.1.5	Zoning: A Legal Instrument . . . . .	63
4.2.0	Subdivision Regulations . . . . .	64
4.2.1	Degree of Intervention . . . . .	64
4.2.2	Flaws in Kenyan Towns: The Case of Mombasa . . . . .	65
4.2.3	Subdivision Regulations: A Powerful Tool . . . . .	67
4.3.0	Building Regulations . . . . .	68
4.3.1	Categories of Building Regulations . . . . .	69
4.3.2	Limitations of Codes . . . . .	70
4.3.3	The Abuse of Codes . . . . .	71
4.3.4	How to Increase Implementation Capacity . . . . .	71

4.4.0	Approval by Government Agencies . . . . .	72
4.4.1	The Power to Deny Permission . . . . .	72
4.4.2	Clear Definition of Responsibilities . . . . .	73
4.5.0	Land Tenure Systems . . . . .	74
4.5.1	Tenure in Relation to Land Use Control . . . . .	74
4.5.2	Land Tenure Systems in Mombasa Municipality . . . . .	75
4.6.0	Development Control Legislation . . . . .	77
4.6.1	The Town Planning Ordinance 1931 . . . . .	78
4.6.2	The Land Planning Act 1968 . . . . .	79
4.6.3	Local Authority Act and Powers of Control . . . . .	80
4.6.4	The Physical Planning Act 1996 . . . . .	82
4.6.5	The Land Control Act . . . . .	83
4.7.0	Compulsory Acquisition . . . . .	84
4.8.0	Control Legislation: Contradictions and Confusions . . . . .	85
4.9.0	Conclusions . . . . .	89
<b>CHAPTER FIVE</b>		
5.0.0	Local Authority: Development Control and Governance . . . . .	103
5.1.0	The Local Authority Management Structure . . . . .	104
5.2.0	The Planning Department . . . . .	105
5.3.0	Planning And Policy in Kenyan Local Government . . . . .	108
5.4.0	Control And Urban Governance . . . . .	110
5.5.0	Conclusions . . . . .	111

## CHAPTER SIX

6.0.0	Summary of Findings, Recommendations and Conclusion . . . . .	113
6.1.0	Summary of Findings . . . . .	113
6.1.1	Unco-ordinated Developments . . . . .	115
6.1.2	Freehold Titles To Land . . . . .	115
6.1.3	Land Subdivisions . . . . .	116
6.1.4	Land and Building Speculations . . . . .	116
6.1.5	Mixed Land Uses . . . . .	117
6.1.6	Acute Deficiencies in Services and Facilities . . . . .	117
6.1.7	Lack of Effective and Efficient Management and Administrative Machinery . . . . .	117
2.0	Recommendations . . . . .	118
6.2.1	Preparation of a Comprehensive Land Use Plan . . . . .	119
6.2.2	A Case of Stringent Legal Measures . . . . .	119
6.2.3	Need For Proper Subdivision Procedures . . . . .	120
6.2.4	Curbing Speculation . . . . .	120
6.2.5	Solving The Housing Problem . . . . .	121
6.2.6	Community Involvement . . . . .	121
6.3.0	Conclusions . . . . .	122
	Bibliography . . . . .	124
	Appendices . . . . .	129

## LIST OF TABLES

2.2.0	Area of District by Division . . . . .	17
2.3.1(a)	Population Size by Division . . . . .	19
2.3.1(b)	Population Density by Division . . . . .	20
2.7.2(a)	Planned and Unplanned Swahili Houses . . . . .	28

2.7.2(b)	Construction Materials . . . . .	29
2.7.2(c)	Approval of Building Plans by Council . . . . .	30
2.7.2(d)	Plot Coverage . . . . .	30
2.7.2(e)	Population According to Housing Type . . . . .	32
2.8.0(a)	Housing Density(Low Income) . . . . .	34
2.8.0(b)	Planning Standards for the Area . . . . .	35
3.0.0	Awareness of Control Measures . . . . .	45
4.2.2(a)	Land Subdivision . . . . .	66
4.2.2(b)	Subdivision Procedure . . . . .	66
4.2.2(c)	Major Problems Perceived . . . . .	66
4.2.2(d)	Missing Services/Facilities . . . . .	67
4.5.2	Land Ownership . . . . .	76
4.7.2	Respondents Views on Compulsory Acquisition . . . . .	85

**LIST OF FIGURES**

Figure 1	Conceptual Model . . . . .	12a
Figure 2	Mombasa's Position in Kenya . . . . .	17a
Figure 3	Mombasa's Position in Coast Province . . . . .	17b
Figure 4	Mombasa District . . . . .	17c
Figure 4(a)	Mombasa District Population Densities . . . . .	20a
Figure 5	Study Area(s) . . . . .	25a
Figure 6	Existing Land Uses . . . . .	25b
Figure 7	Population Distribution in the Study Area . . . . .	26a
Figure 8	Housing in North Mainland . . . . .	27a
Figure 9	Housing Density . . . . .	27b
Figure 10	Four Roomed Plan for Swahili House . . . . .	28a

Figure 11	Six Roomed Plan for Swahili House . . . . .	28b
Figure 12	A Modified Swahili House Plan . . . . .	28c
Figure 13	Recreation and Open Spaces . . . . .	33a
Figure 14	Village Layout Plan for Kisauni, Sec. I . . . . .	40a
Figure 15	Land Ownership Pattern in Mombasa Municipality . . . . .	75a
Figure 16	Mombasa Municipal Council Management Structure . . . . .	104a

**LIST OF PLATES**

Plate 1	A Section of the unplanned settlement in Kisauni . . . . .	93
Plate 2	A planned swahili settlement . . . . .	94
Plate 3	A modified swahili house . . . . .	95
Plate 4	A 'dilapidated' building in the Town centre . . . . .	96
Plate 5	Flouted Zoning Regulations . . . . .	97
Plate 6	An outline of a swahili house . . . . .	98
Plate 7	Flouted beach construction regulation . . . . .	99
Plate 8	Main road in town without building line . . . . .	100
Plate 9	Unplanned housing with no access between buildings . . . . .	101
Plate 10	An undeveloped plot in the town . . . . .	102

## CHAPTER ONE

### 1.0.0 INTRODUCTION

The urban land issues now facing developing countries are necessarily of concern to the planner and the community. The availability and price of urban land affect project design and the relation of economic and social costs to benefits. Wider considerations of land utilization are involved in the quest for more efficient spatial pattern(s), more employment opportunities, and a less uneven distribution of income and wealth between the rich and poor (Churchill, 1983).

As UN-Habitat conference in Vancouver, Canada (1976) and recently in Istanbul, Turkey (1996) demonstrated many of these urban land issues are almost of universal concern. Urban land issues are inherently complex because of the many interactions between land uses, locational specificity and the deep roots of land rights in legal and social-cultural systems. The situation is made still more complex by the variety of objectives that land policies are supposed to further and by the limitations, interactions, and side effects of the instruments that can be used. The objectives generally put forward for urban land policies each of which must be considered within the dynamic setting of rapid urban expansion can be summarised as:

1. An appropriate supply of urbanised land for dwellings, for community and recreational activities, and for productive activities, including the provision of basic urban services.
2. Harmonious spatial urban patterns that minimise the use of resource relative to economic and social benefits.
3. Greater equity in wealth and income, including access by low income families to adequate shelter.

4.A spatial distribution of population and activities at regional and national levels consistent with general national policies.

The trouble with such objectives is not only that they overlap and raise familiar conflicts between equity and efficiency, particularly in the short term. They are also too vague to be useful. They do not define the concepts needed to determine operational priorities and to adjust these priorities to rapidly changing conditions. Desirable urban patterns are particularly difficult to define with precision; many value judgements are involved and must be made in ignorance of long term effects and of changes that will occur over the long life time of what is now being built.

The analysis presented should refine and illuminate many of the urban land use control problems that confront the authorities of developing nations and hopes to provide some practical guidelines to sustainable and adoptable approaches for dealing with them.

#### 1.1.0 PROBLEM STATEMENT

Mombasa is a modern town with a population of about 655,000 (Kenya Economic Survey and projections 1991). The town has developed to its present status over the last 2000 years and has experienced one of the highest growth rates in Kenya, especially in the last three decades.

The developments that have taken place in Mombasa town, with respect to every urban developmental aspects and in particular with respect to land uses, are typical of the many modern urban centres and cities in East Africa and Africa in general. In Kenya the impact of land use control and/or regulation policies is evident gauging from their spatial

development pattern(s).

In order to appreciate the theoretical and practical impacts of urban land use regulatory policies, it is necessary to mention briefly the techniques (or policies) applied to regulate and control land uses in urban areas. These are classified in three main categories namely:

- (i) Incentives; which utilize government power and financial resources to organise land uses more effectively.
- (ii) Management; Improvements which remove barriers to the effective use of these incentives and restrictions as market forces and
- (iii) Restrictions; utilising power to restrain or otherwise direct private land uses and development activity.

This study, however, focuses mainly on the third group and discusses the nature, objective and problems of restrictive control used alone, or as part of the planning process. Restrictions include zoning regulations, subdivision and building regulations and controls, and the prohibition of relocation of developments such as slums and squatter settlements. Depending on how they are enacted and implemented restrictive land use controls can be either helpful or detrimental in meeting community objectives.

To benefit the community the regulatory framework must be linked to the economic and social objectives and be capable of implementation. Effective mechanisms and the will to monitor and enforce regulations must also be present. Adequate information is required to define the framework to modify it in the light of changing circumstances and particularly to adjust it to take into account of the effects of rapid urban growth like in Mombasa.



Land use regulations in developing countries, of which Kenya is one, often fail to achieve greater efficiency and equity in the use of urban land and this is evident in many Kenyan towns. As a result plans often bear little or no relation to the peoples needs and wishes and they are in any case distorted by limited implementation. These problems are exacerbated particularly in the face of rapid change by the lack of consistent overall policy framework and of mechanisms for resolving (of) conflicts between different objectives.

No efforts have so far been made in Mombasa municipality to address the land use control and regulation deficiencies. The administrative structure of the town has yet to tackle these land use problems at policy level to achieve results—efficiency and equity in the use of land. Indications are that development that is taking place in Mombasa municipality at present, as regards land use, are haphazard and on ad hoc basis. Consequently flouting of land use regulations are common and the result has been the proliferation of unauthorised settlements without due regard to basic services, incompatible land uses activities, overdevelopment, and environmental degradation problems.

In addition this has resulted to uneconomic land subdivisions which are inaccessible and impassable in the rainy season and endless land disputes on boundaries and plot sizes. In some of the subdivisions both qualified and unqualified land surveyors and planners have been used but no titles are issued, especially in the mainland areas. As a matter of fact the Mombasa municipality has been reeling from an awesome array of misdeeds; a house sale scandal, plot grabbing, condemnation of newly built houses and construction of unauthorised projects that have attracted the

public attention. With such developments, unless priorities for control of urban land are established, any planning or regulatory efforts are academic, in as far as Mombasa situation is concerned.

## 1.2.0 JUSTIFICATION OF STUDY

Urban planning in the context of Mombasa is more complex and problematic than in any other town in Kenya. The widespread traditional attitude that "Mombasa" properly referred to the island and that the surrounding mainland areas were of little importance and did not require planning and services was illogical and a serious constraint. A change is noticeable at the official levels in this regard, but in spite of the fact that more citizens of Mombasa live on the mainland than on the island, the development of municipal and government services is still concentrated on the island. This is as a result of the requirement by the existing land use regulation and policies.

The concentrated developments that have taken place recently on the surrounding mainland will, if effective steps are not taken, result in very severe overcrowding and flouting further of development control measures, less amenity, reduction of health standards and a slowing down of economic growth. In common with other towns in Kenya Mombasa will be required to cope with large numbers of people who, unable to find support in the rural areas, will move to urban centres. These people will require accommodation of a very low cost nature.

In the early 1970s it was expected that with appropriate programming Mombasa will not suffer adversely from the influx having the advantage of an indigenous building technology capable of providing a relatively high

standard of accommodation at low cost(s). These expectations have however become illusive since the accommodation problems facing Mombasa residents today are as serious as those witnessed in the city of Nairobi and other major towns in Kenya.

In terms of the physical development, Mombasa like in many of the Kenyan urban areas, has not been spared from the widespread practise of municipal malfeasance. The developments (physical) that have taken place in Mombasa of late are haphazard without due regard to the plan proposals set out in the 1962 and 1971 Mombasa Physical development plans. The Mombasa draft physical plan of 1971 was prepared with the view of revising the Mombasa master plan which was adopted by the Mombasa municipal council in 1962 which later proved inadequate due to inaccurate estimates of population figures.

### 1.3.0 LITERATURE REVIEW

A number of studies have so far been done on urban land policies and their relationship to the development pattern that have emerged with time. These studies have however addressed themselves to the general government and urban land policies. This study zeroes in into the most valuable urban land policies and addresses itself to issues and opportunities arising out of recognition of the use of urban land for the general interest of the community.

Ratchliffe, (1979) whose major preoccupation in urban land use is mainly based on the interplay of market forces, recognises that economic activities in each community directly serves its population and are influenced by the nature of that population and that population tends to

influence future land use in the urban areas.

Yahya, (1975), in his detailed work on the effectiveness of urban land use policies observes that effective urban land use policies are necessary for co-ordinated development of the urban areas. He observes further that there is a scarcity of land infrastructure, information, legal infrastructure, capital and the like in the urban areas of Kenya. He does not point out, however, why, and to what extent such policies have failed to achieve the desired development patterns.

Chege, (1977) in a study on land constraints in Nyeri town, observes that there is land shortages for urban development yet time and again town boundaries are being expanded! No further explanation suffice other than the explanation that the boundary extensions appear to be due to political reasons, other than for economic and deliberate attempt to avail land for urban development.

He notes that mere extension does not serve any purpose and only make development control difficult. This is debatable considering the size of other cities in the MDCs and where development has been affected.

Kingoriah, (1980) in his assessment of the impact of government policies on the spatial structure of Nairobi concludes that indeed government policies have had a significant effect in shaping the land use structure in Nairobi. This study is however too generalised and is only concerned with the 'end state' rather than the 'dynamic' nature of both the 'policies' and the city's spatial structure.

Shibira's work (1978) on urban land use planning policies for the physical development of the urban areas comes closer to the problems of development control and attempts to show the socio-economic and physical

causes to the development control failure(s). He does not however, address the failure of the development control in the context of policy administration and legal structures. Shibira notes that there is unwarranted developments in the Kenyan urban areas but he does not suggest tangible policy measures to counter this problem.

He however rightly observes that although land control legislation exist in the form of local authority (local government) regulations, Town Planning Act, and Land Planning Act (1968) there is overwhelming evidence that there is no execution of the appropriate provision to ensure coordinated development. But the unanswered questions in this work are who is to execute these provisions and how and at what level of planning.

#### **1.4.0 STUDY OBJECTIVES**

The study's objectives are

- (i) To find out the role land use regulations and policies have played in the emergent urban development structure of Mombasa.
- (ii) To find out the level of involvement of the municipality in development control over Mombasa's present (and past) land use structure.
- (iii) To propose a workable approach to utilisation of land use regulations in developing a sustainable urban structure in Mombasa.

#### **1.5.0 STUDY ASSUMPTIONS**

In line with the objectives stated above, two null hypotheses were formulated for the purpose of testing the data collected.

It was hypothesized that:

1.  $H_0$ : Both the central and local government regulations have been the main influence on the emergent urban development structure of Mombasa.

$H_1$ : Alternative

2.  $H_0$ : Uncontrolled development in Mombasa might have been caused by the prevailing land tenure system.

$H_1$ : Alternative.

#### 1.6.0 STUDY METHODOLOGY

A large part of this work was based on secondary data mainly from the government land regulation and control policies, such as zoning ordinance and by-laws, land re-adjustment schemes, subdivision regulations, building regulations, the various planning legislation/laws like the Land Planning Act (1968), and the local government regulations among others.

The primary source of data for this study was a field survey where critical examination of the housing development activities and their allied urban management activities in the town were examined. This was supplemented by both formal and informal interviews with officials of municipal council (local authority), government officials - planners and administrators including politicians, and local community members. Owing to shortage of time and resources the survey could not cover Non-Governmental Organisations, self-help groups, land buying companies, and the land registrar, all who would be very useful sources of information for this study.

### 1.6.1 Sampling Procedure

For the purpose of this study Mombasa mainland north was selected as the suitable study area. The area was considered in residential units or strata. It was estimated that the population of Mombasa mainland North was approximately 154,000 with an average household size of seven (7). This was about 22,000 households in the study area. It was also estimated that about 45% of the population in this area is rural. This left about 12,000 households from which data was collected. The main focus however was on the low cost housing developments in the study area which constituted about 70 per cent of the total housing developments. About 1 per cent of the total as sample was taken for the household survey which was 60 questionnaires. This was done on the basis of stratified random sampling.

The basic idea in formulating strata is to subdivide the population so that these subdivisions differ greatly with regard to the characteristics being investigated and so that there is as little variation as possible within each stratum with regard to the characteristics under measurement. Four strata were formulated. The planned swahili settlement at Kongowea formed one strata and the unplanned Mkomani settlements comprised the other. At Kisauni proper, the unplanned swahili settlement was considered separately from the formally village layout residential areas. For the purpose of data analysis the two strata at Kongowea were combined and so were those at Kisauni. The questionnaires to be administered were allocated proportionately among the four strata and this is also because of the proportionate distribution of population in the strata. Respondents were then picked systematically.

All the questionnaires were written and administered in English except for the household questionnaire which was administered in Kiswahili since majority of the residents here are Swahili. Relevant data to the study was analyzed using SPSS and used in the study to support both observed and expected occurrences. Data was presented mainly in the form of percentages.

### 1.6.2 Study Limitations

This study was faced with few problems. In data collection when structural direct interview is adopted, the problem of wording the questions properly, unambiguously and clearly and getting unbiased and complete answers to personal and technical questions posed a real problem. For instance, respondents could not understand what terms like zoning, subdivision or building regulations stood for. The interviewer had to spend unnecessarily long time explaining the concepts.

One major problem encounter in this study was *absentee landlordism*. To avoid getting biased and ambiguous answers to questions which would have, otherwise, been responded to by landlords, we interviewed only the longest residing tenants in the plot or the landlords *agents*. Most of the land lords had *agents*, the majority of whom were their relatives. The *agents* proved to be very useful in providing the needed information as they had first hand information to most of the issues raised.

Despite the above limitations, in addition to pressure from normal academic schedule in college, useful data was gathered which has formed the ground work for this study.



## 1.7.0 CONCEPTUAL FRAMEWORK.

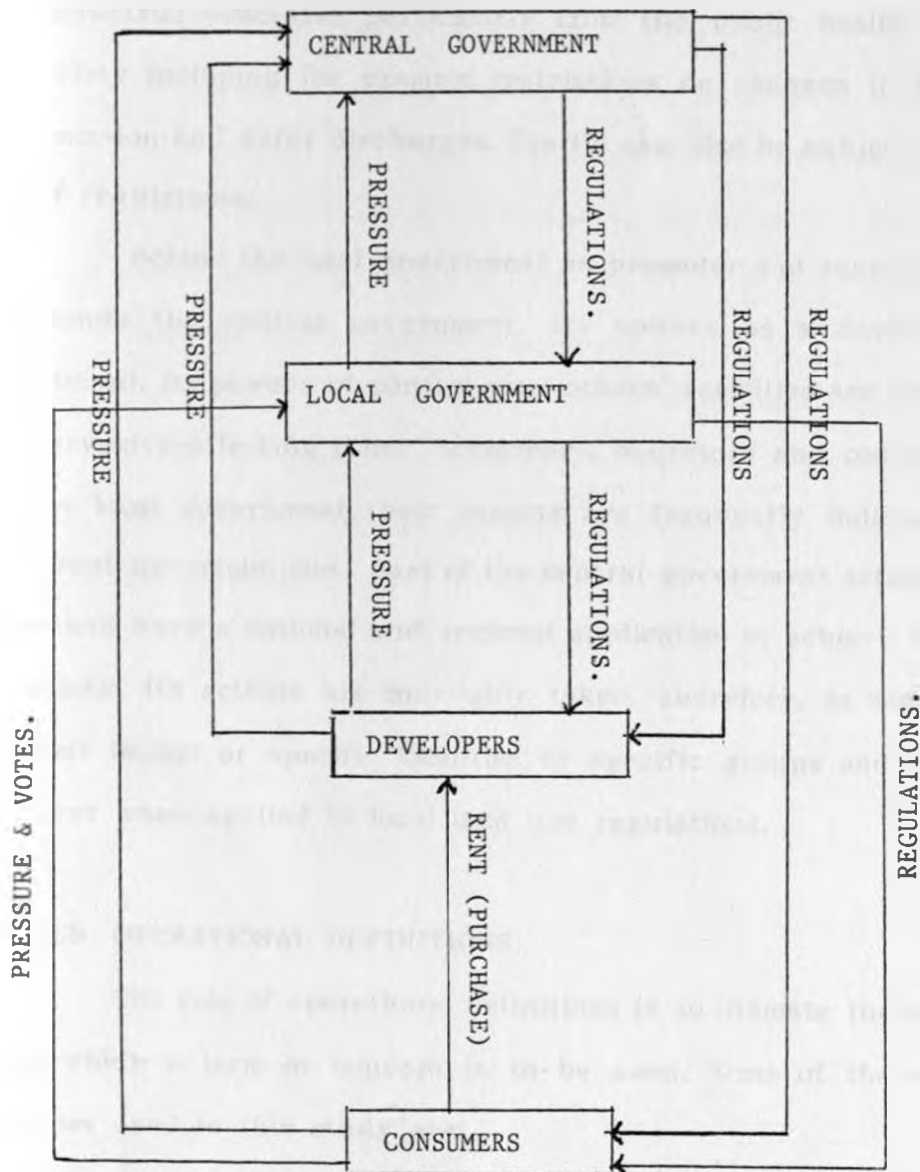
The process of land use regulations where activities or developments take place and land resources become committed to them with or without public control are brought about by the actions of various agents. Among these agents a distinction can be made between those belonging to the community and those belonging to the government (Solesbury, 1984). The community's agents include the consumers and developers. This work however focuses on the government—both central and local—as the main agent that controls land use for the best interest of the community.

The local government responds politically to the community on the one hand and on the other it has statutory duties and is limited by its statutory powers, as well as by the finances and manpower it has available at any point in time. In practise the local governments perform in two distinct ways in seeking to exercise control over land uses: in some aspects it has a promotional role initiating changes and in the other aspect it has a regulatory role responding to changes initiated by others.

Its promotional role is largely determined by its range of activities as a developer, and operator in its own right. The regulatory role is also diverse in its application. It exists in relation to those kinds of land use changes which have been statutorily made subject to approval by local authorities.

Development control is the most widespread example of land use regulations necessitating with certain exceptions, permission for any building works or change of land use. Other powers include to regulate changes in the quality of accommodation in dwellings, offices, factories, and other workplace and to require improvements where that accommodation

FIG 1 CONCEPTUAL FRAMEWORK.



SOURCE: Adopted and modified from Solesbury (1984).

falls below predefined standards. Yet other powers exist for regulations of industrial processes particularly from the public health view point and safety including for example restrictions on changes in noise levels, air emission and water discharges. Traffic can also be subject to a wide range of regulations.

Behind the local government as promoter and regulator of land uses stands the central government. Its powers as a developer are fairly minimal. Its powers of control over others' activities are greater but while pervasive-affecting other developers, operators and consumers including the local government their impacts are frequently indirect and to some extent uncertain. Most part of the central government actions are intended to and have a National and regional application to achieve consistency and equity. Its actions are inevitably taken, therefore, in some disregard of their impact or specific localities or specific groups and can seem fairly blunt when applied to local land use regulations.

#### 1.8.0 OPERATIONAL DEFINITIONS

The role of operational definitions is to indicate the specific manner in which a term or concept is to be used. Some of the most important terms used in this study are:

- i) **Government:** (Central and local). The elected central and local authorities which exert measures of control over the pursuit of activities and whose locus in this rests essentially on the law.
- ii) **Community:** Groups of people and/or individuals who are engaged in activities of providing and consuming commodities of various kinds, subject to control by the government.

- iii) **Developers:** Creators of public and private assets for example buildings, plants, modification of space etc.
- iv) **Regulations: (land use)** Involves the government - recognising spill over effects on urban land and aiming at increasing efficiency and distributional aims such as making land available to all groups in the community and ensuring that the benefits of development go to the community as a whole.
- v) **Development:** The carrying out of building, engineering, mining or other operations on land or the making of any material change in the use of buildings or other land. (Town and Country Planning Act 1947, section 12(2)).

## CHAPTER TWO

### 2.0.0 INTRODUCTION

This chapter examines, in addition to introducing the study area, the evolution and implementation of regulatory policies in Mombasa. The chapter is mainly historical and meant to document some of the colonial, and eventually independent Kenya's, decisions that have had significant impact on contemporary Mombasa. These decisions concern physical planning and development control. The background information will be used to assess the degree to which the framework of controls has been applied in regulating land use development in Mombasa municipality.

### 2.1.0 BACKGROUND INFORMATION OF MOMBASA

Mombasa is the oldest town in Eastern Africa and has for centuries been the centre of a thriving maritime trade in the Indian Ocean and the Persian Gulf. The historic core of the town skirts port Tudor, the oldest settlement marked now by a dense cluster of Swahili and modern houses where dhows and boats are still carved by scraping, painting and repairs. Much of what is known as *mji wa kale* (old town) was built in the present century but Fort Jesus built by the portuguese in the 16th century is perhaps the earliest substantial structure in the town.

At the time of building the Fort the town then consisted of the Arab/Swahili village separated from the Fort by about half a mile of coconut *shambas*. Around the Fort clustered a few more substantial houses and the population of the town then was probably between 10,000 to 30,000 (Booker and Deverel, 1947).

Until the late 19th century there was little change as far as the physical aspects of the town were concerned. But when large areas of land were purchased adjacent to Kilindini (port) and the railway linking treasury square, near Fort Jesus, to Kilindini was laid down, and thence to the new causeway (kipevu) joining the island to the mainland, Mombasa started taking a new shape.

The port and the railway heralded the growth of the modern town and soon a need was felt for modern streets, a shopping area and high class residential areas. The 1926 Mombasa Town planning scheme was implemented and by 1930's many streets had been built, and the railway station had been moved to the centre of the island (Stren, 1978).

As a response to the need for cheap accommodation for labourers in the port and in the few industries which were springing up, temporary *village layouts* were created which became known as 'Majengo'. These areas are still an important element in the housing stock of the towns. Today Mombasa is the third largest town in East Africa after Nairobi and Dar-es-salaam, with a population of 655,000. It has the largest harbour on the East African coast and provides among African cities a unique set of living conditions.

Its role as a transportation and industrial importance is evident and as the tourism and agricultural industries of the coast province continues to grow it will perform an increasingly important role as a resource and international tourist destination.

2.2.0 SITUATION AND PHYSIOGRAPHIC FEATURES

Mombasa district is one of the six districts in coast province and among the smallest districts in the country with a total area of 275 km<sup>2</sup> of which about 65 km<sup>2</sup> consist of water surface. It is composed of an island surrounded by crescent shaped portion of the mainland consisting of Kisauni, Changamwe and Likoni. It borders Kilifi district to the north, Kwale district to the south, and west and Indian ocean to the east. Its location in relation to the country and the coastal region are shown on figure 2 and 3 respectively.

The districts' national and international significance as a centre of tourism, commercial and industrial activities, designates it as a principle town and urban centre second only to Nairobi. It serves not only its hinterland, but also across National boundaries in terms of commercial, industrial and transportation services.

Table 2.2.0 Area of the District by Division (sq.km)

DIVISION	AREA (SQUARE KILOMETRES)
Island Division	13
Kisauni Division	100
Likoni Division	48
Changamwe Division	39
<b>Total Area</b>	<b>210</b>

Source: District Commissioners office.

The Island division, which is the smallest, comprise of the Central Business District (C.B.D.) and is almost built up completely, whereas the three other divisions are rural with all the characteristics and development problems similar to other rural divisions in the country.

Fig. 2

# LOCATION OF MOMBASA DISTRICT IN KENYA

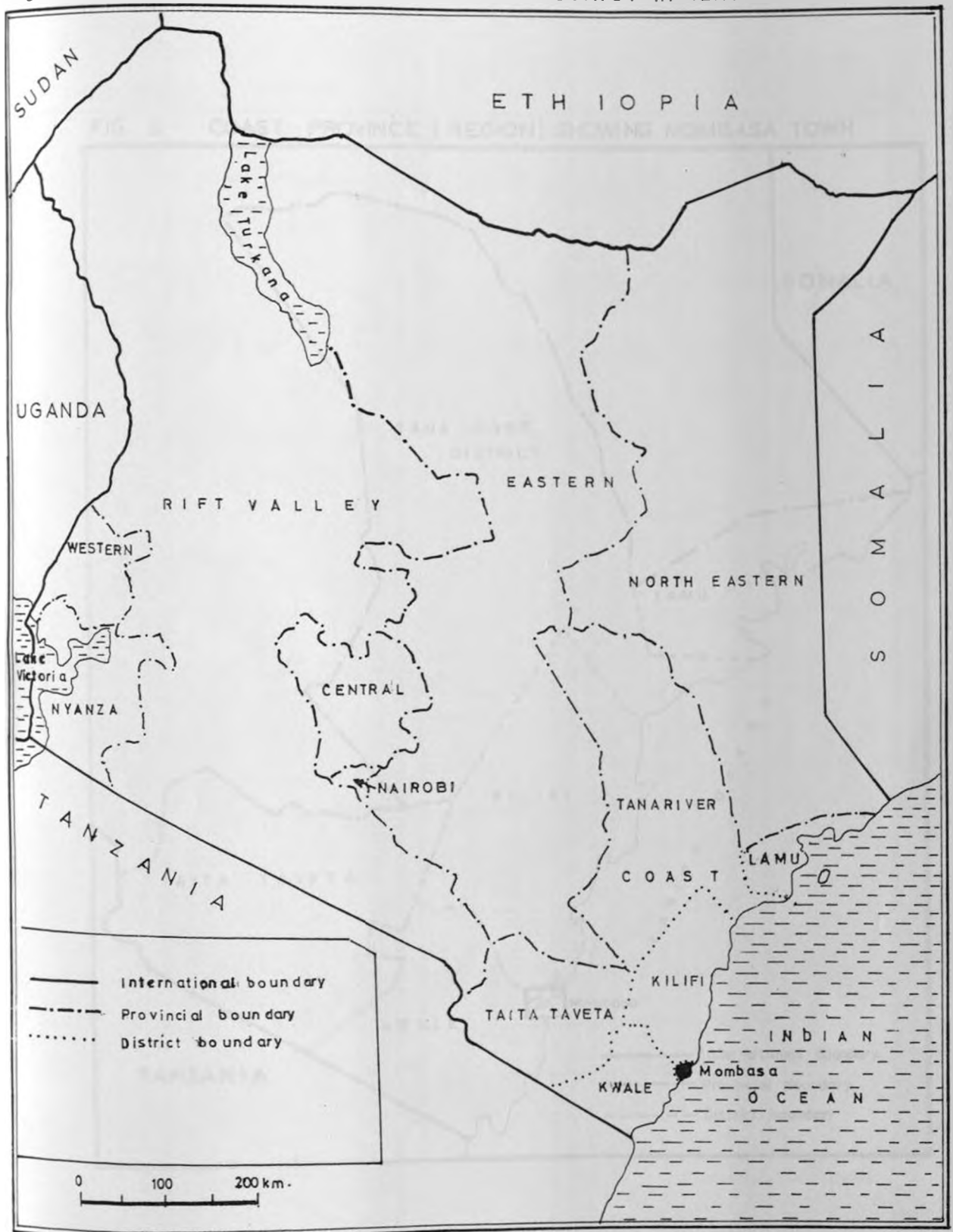
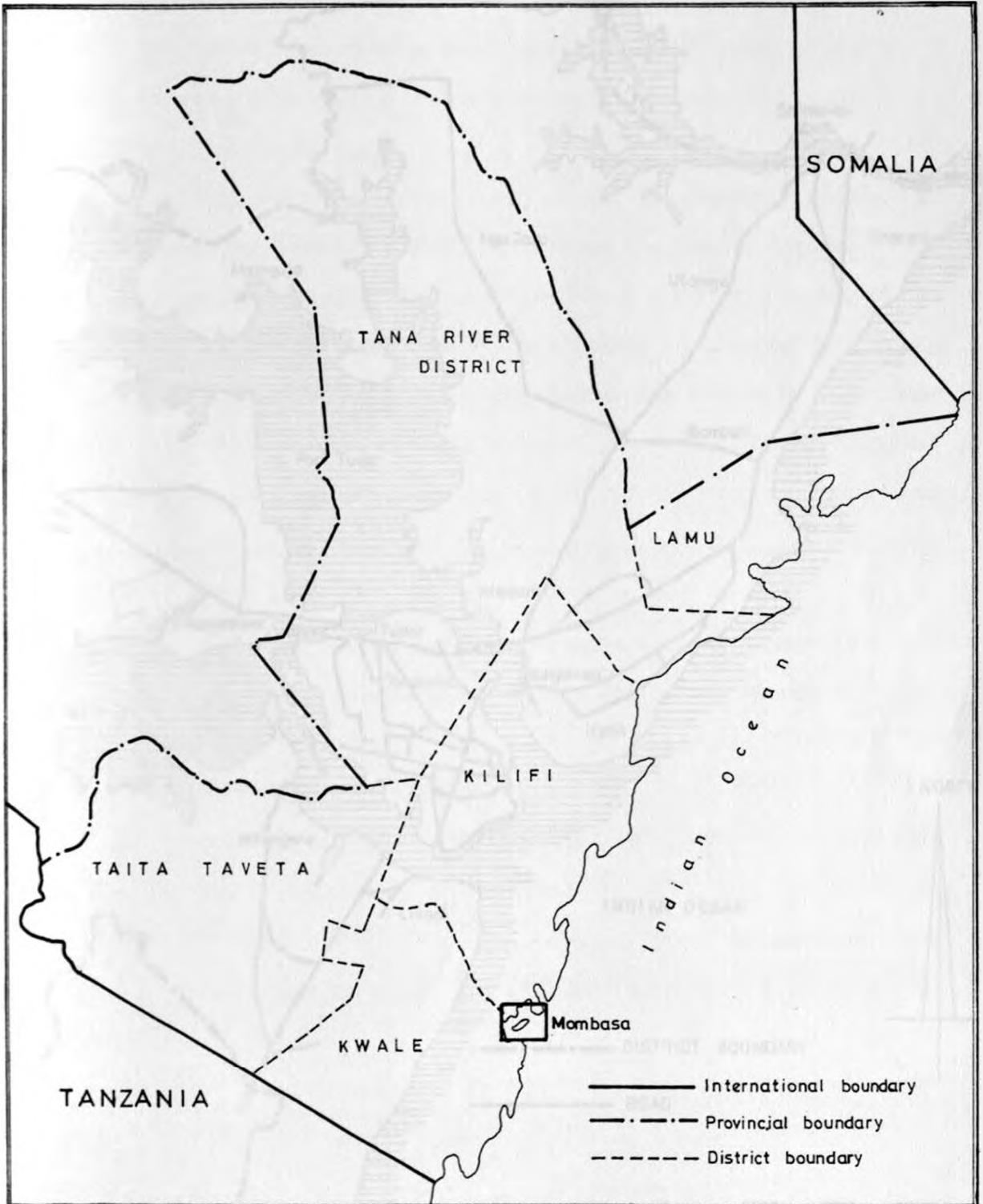
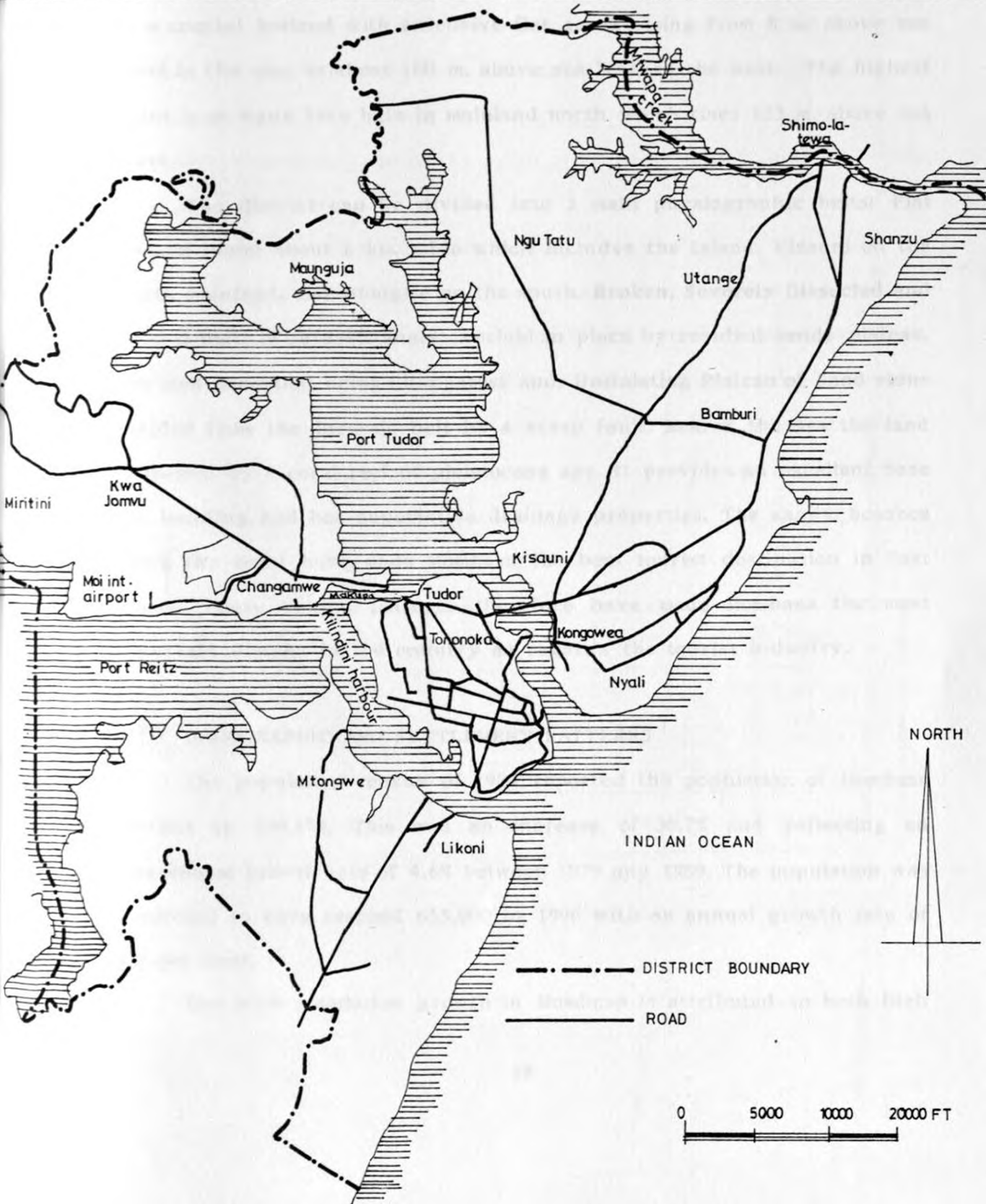




FIG. 3 COAST PROVINCE (REGION) SHOWING MOMBASA TOWN





The District is situated along the east coast of Kenya between the latitudes 3°08' and 4°10' south of the equator and between longitudes 39°06' and 39°08' east of the great meridian. Physically, Mombasa district is a coastal lowland with extensive flat areas rising from 8 m. above sea level in the east to about 100 m. above sea level in the west. The highest point is at Nguu Tatu hills in mainland north which rises 123 m. above sea level.

The district can be divided into 3 main physiographic belts: **Flat Coastal Plain:** about 6 km. wide which includes the Island, Kisauni on the north mainland, and Mtongwe on the south. **Broken, Severely Dissected and Eroded Belt:** of jurassic shale overlaid in place by residual sandy plateau, the most important being Changamwe and; **Undulating Plateau of Sand stone** divided from the jurassic belt by a scarp fault. Nearer the sea the land is formed by a coral reef of pleistocene age. It provides an excellent base for building and has superlative drainage properties. The sandy beaches along the coast have made Mombasa the best tourist destination in East Africa. These unique features therefore have made Mombasa the most important district in the country as regards the tourist industry.

### 2.3.0 DEMOGRAPHIC AND SETTLEMENT PATTERNS

The population census of 1989 reported the population of Mombasa district as 499,570. This was an increase of 30.7% and reflecting an intercensal growth rate of 4.6% between 1979 and 1989. The population was projected to have reached 655,000 in 1996 with an annual growth rate of 4.0 per cent.

The high population growth in Mombasa is attributed to both high

natural growth rates and migration rates from other districts as Mombasa is a major urban centre, with many commercial and industrial activities. The immigrants mostly come to Mombasa in search of jobs, education services, medical services and others. The 1989 census reported a lifetime migration of 216,878 in-migrants and 40,989 out-migrants indicating a net immigration of 175,889 people. Until recently the rate of in-migration had gone up tremendously due to the influx of refugees from Somalia and other neighbouring countries.

### 2.3.1 Population Distribution and Density

The table below indicates that Island divisions has the highest population in the district which is 40% of the entire district population. Likoni division has the lowest population representing about 11.8% of the total district population. This can be attributed to lack of infrastructure as compared to the other three divisions which are well served by physical infrastructure such as roads and other facilities.

Table 2.3.1(a) Population Size by Division

Division	% share	1993	1994	1996
Likoni	11.8	68688	71435	77,264
Island	40.5	235,750	245,181	265,188
Changamwe	24.2	140,868	146,503	158,457
Kisauni	23.5	136,794	142,265	153,874
<b>Total</b>	<b>100.0</b>	<b>582,100</b>	<b>605,384</b>	<b>654,783</b>

Source: C.B.S. 1989 population census.

Table 2.3.1(b) Population Density by Division (persons by sq. km)

Division	Area sq. km	1993	1994	1996
Likoni	48	1431	1488	1610
Island	13	18135	18860	20399
Changamwe	49	2875	2990	3244
Kisauni	100	1368	1423	1539
District	210			

Source: Derived from 1989 CBS population census.

In 1993 average population density in Mombasa was 2772 persons per square kilometre and it was projected to reach 3118 persons per square kilometre by 1996, thus making Mombasa the most densely populated district in the country. However, at the divisional level, Island division had its population density increase from 18860 in 1994 to 20,399 in 1996. At the other extreme Likoni division and Kisauni division had population densities of about 1600 and 1800 persons per sq.km. in 1996 respectively.

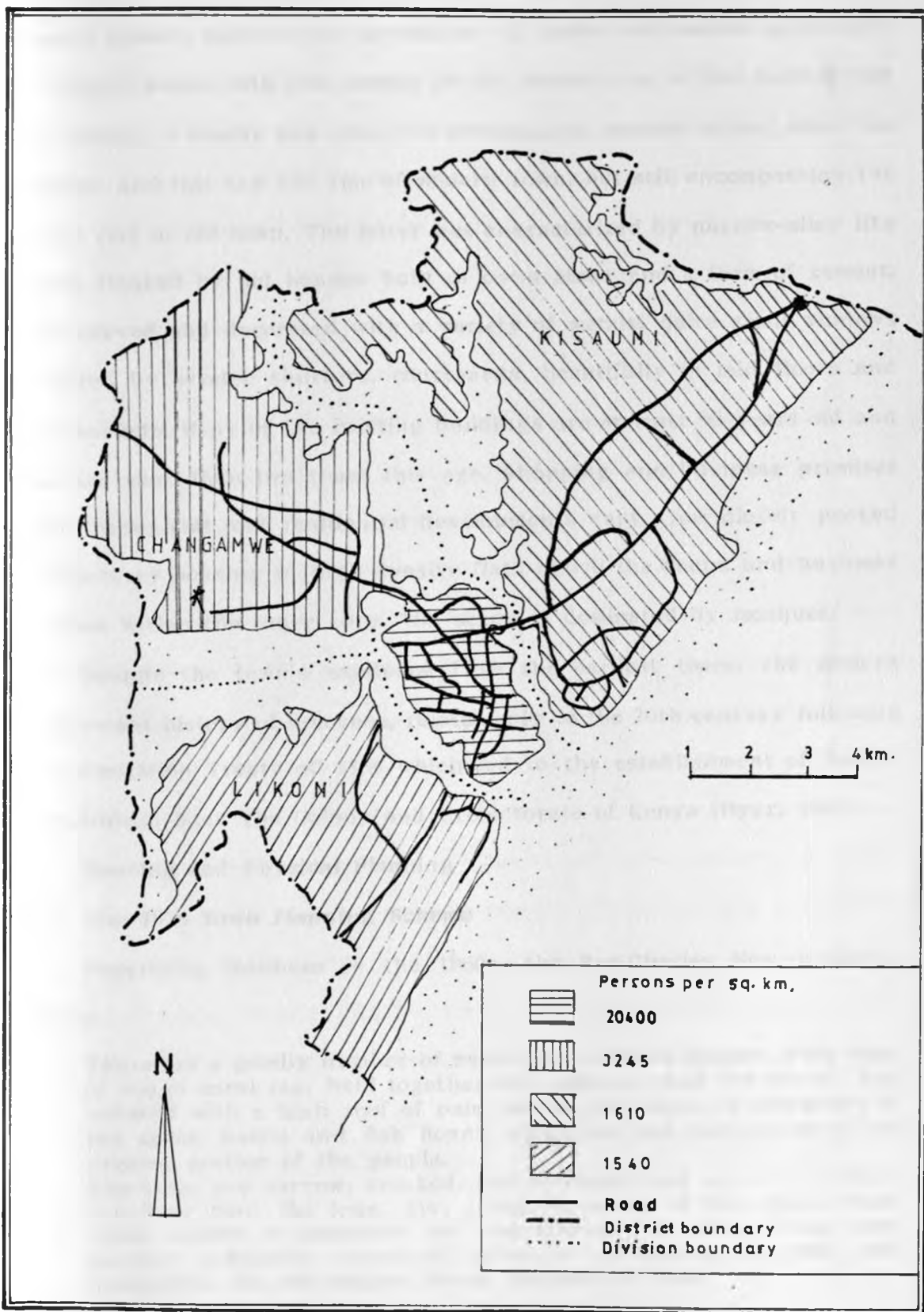
#### 2.4.0 HISTORY OF PLANNING IN MOMBASA

Mombasa is one of the oldest cities in East Africa having been selected as a site for the purpose of maritime trade by Persians for many centuries before Europeans saw the East African coast (de Blij, 1968). Since then Mombasa has for a thousand years or so had a more or less continuous settlement with Africans, Arabs, Asians and Europeans becoming permanent residents of the town.

For many years, however, Mombasa developed as part of the Indian ocean littoral, with its Arab and Asian influences rather than as African settlement upon which some foreign impact on it can be recorded. The town

Fig. 4A

POPULATION DENSITY BY DIVISION



in many aspects took on the appearance of similar settlements existing in the Islamic world. With the coming of the British rule at the turn of the last century, a wholly new phase of development started taking shape on Mombasa, and this saw the rise of modern town, but still encompassing the ancient city or old town. The latter was characterized by narrow-alley like streets flanked by old houses built of coral stone and a form of cement, doors carved and decorated with a variety of metals, quite small windows protected by wooden shutters, courtyards, beautifully in laid floors and busy markets. Many of the existing buildings are at least 90 years old and some are more than two times this age. Shopping and business premises occur throughout and residential developments vary from closely packed single-storey housing to high density flats above the shops and business premises within the inner core. The scene is dominated by mosques.

Despite the town's existence from the earliest times, the modern development history of Mombasa, relates only to the 20th century following the Delimitation Treaty of 1866 which led to the establishment of British Protectorate, later The Colony and Protectorate of Kenya (Dyer, 1963).

#### 2.4.1 Housing and Physical Planning

#### 2.4.2 The 1926 Town Planning Scheme

Describing Mombasa in the 1860s, the Rev.Charles New wrote as follows:

There are a goodly number of square one-storied houses, with walls of rough coral rag, held together with slime or mud for mortar, and covered with a high roof of palm leaves; but here, as elsewhere in the coast, wattle and dab hovels constitute the residences of the greater portion of the people.

The lanes are narrow, crooked, and intricate, and are every-where overhang with the long, low, irregular eaves of the huts, which often render it necessary for the traveller to stoop...long poles project awkwardly from all sides...as ill-looking as they are dangerous; yet the natives never complain of them.

After the British assumed administrative responsibilities for Mombasa in 1895, they sought to change this image by improving sanitary conditions and regulating physical development. The beginning of serious, comprehensive town planning in Mombasa was the appointment in 1913 of Professor W.J.Simpson, an eminent British sanitary expert, to prepare a report on sanitation and public health in Mombasa<sup>1</sup>. In his Report on Mombasa Sanitation sent to the Chief Secretary of the colony on 24<sup>th</sup> September 1913, Simpson proposed town planning and public health measures to alleviate the problems he observed. He was particularly concerned with the closely built over, large irregular buildings intersected with narrow passages and lanes especially in the island. The major legislative instruments proposed to carry out this task included Land Tenure and Registration of Title Ordinances, a Public Health Ordinance, and a Town Planning Scheme. A Town Planning Committee was constituted in 1917 to lay down preparatory strategies for the proposed scheme.

In 1918 a Town Planning Ordinance was enacted in Kenya allowing the creation of preparatory authorities that would prepare a town planning scheme in a given area. The objective of the scheme provided for..."planning, replanning or reconstructing the whole or any part of the areas comprised in the scheme and for controlling order, the nature and direction of development within the area" (Dyer, 1963). A major step in the preparation of the proposed town plan, was the passage of general

---

<sup>1</sup> Simpsn, W.J (1913) **Report on Mombasa Sanitation**. In this report is found an analysis of sanitation situation in Mombasa and accompanying policy proposals.



enabling legislation—the Town Planning Ordinance in 1919<sup>1</sup>. The ordinance was intended to solve Mombasa's planning problems in so far as it conferred upon the authority to be appointed to prepare a town planning scheme, powers for creating through private land a road-system to be vested in the Crown, and for repooling and proportionally redistributing the remaining private land in relation to that system under the town planning statute. Mombasa Municipal Board was constituted as a town planning authority for Mombasa Island.

Conditions in the mainland areas were not nearly as serious. In the western and northern parts of the town, inhabited by Swahili and Muslim Africans, Simpson observed that:

The *makuti* houses were more regularly arranged, though their design is such as to deprive them of light and ventilation.

Since he felt that the condition of the greater portion of the native quarter was so radically bad, Simpson recommended, in addition to improved sanitary conditions, a thorough program of regulation and town planning for the entire town. This would have the effect of relieving congestion in the island and regulating development elsewhere. His suggestions included, among others, a town planning scheme to regulate development and the codification of powers to regulate building. Simpson concluded his report with some simple zoning proposals for different areas of the town. These proposals included the separation of major commercial.

---

<sup>1</sup> A key figure in the preparation of the ordinance was Mr. C. G. Fannin, a Rhodes scholar and a W.W.II soldier settler who was hired by the colonial office through the Kenya Director of Land Surveys, A.G. Baker, to do survey work in Kenya. He was also the man who devised the *village* lay out schemes in Mombasa(sec.2.9.0)

industrial, and warehouse areas from residential areas.

All the land designated for repooling included a requirement that land owners surrender 20% of their land to the government for roads, open spaces, and the like. On the basis of the powers conferred by the Town Planning Ordinance, the Town Planning Committee (Town Planning Authority) prepared a proposal of a town planning scheme for the town in 1924. In 1926 the planning scheme was adopted- requiring the pooling and redistribution of land into regular shaped plots, the establishment of road reserves, basic zoning into an industrial and non-industrial areas, and a maximum density of 20 dwellings to an acre-or a minimum plot size of one tenth to one twelfth of an acre. The scheme was implemented and by mid 1930's many streets had been built and drainage schemes provided covering most of the land.

However the old town was too closely built over to be dealt with under the planning schemes and was specifically omitted. As a response to the need for cheap accommodation for labourers into the port and in the few industries which were springing up 'Temporary village layouts' were created which became known as "majengo". These areas are still an important element in the housing stock in the town today.

The Municipal Board was elevated to that of a council in 1959, thereby extending the boundaries of the local authority to include the whole of Mombasa district. Consequently the first comprehensive long term physical development plan covering the whole of Mombasa municipal area, the Mombasa Master Plan, was prepared and adopted by the council in 1962. This was revised later to form the 1971 Draft Physical Plan for Mombasa.

Unlike Nairobi, Mombasa never had a set of density and zoning by-laws, so that policies on density were agreed and applied under the general provision of building by-laws. For instance the Local Government Adoptive Building By-laws allowed for the designation of areas for grade 1 and 2 building graded according to the standard of construction (Republic of Kenya, Building code, 1968). Consequently housing types throughout Mombasa district range from the most temporary type of shelter built according to *village layout* prepared by the council and constructed of *makuti*, tin, or corrugated iron sheets roofing and modern houses to flats of contemporary design and construction (Syagga, 1985).

### 2.5.0 THE STUDY AREA: MOMBASA MAINLAND NORTH.

North mainland comprise an area of approximately 3000 hectares extending from the New Nyali bridge to Shimo-la-Tewa creek at the border of Mombasa and Kilifi district, about 18 km from the island. The area is mainly residential and is divided into four residential districts namely Kisauni, Kongowea, Freretown settlement and Nyali estate. There is a group of large institutions at Shanzu like Shimo-la-Tewa high school and Bamburi portland cement factory at Bamburi.

Another notable feature along the north mainland is a beach line stretching from the Tamarind Hotel at Mkomani to the prestigious Hotel Intercontinental at Shanzu (fig.13). The beach line has been rapidly changing from residential to commercial use. Other major land uses are the golf course and the agricultural show ground, army barracks at Nyali, commercial activities located along the old and new Malindi roads, and along Nyali road, public purposes comprising primary and secondary schools and

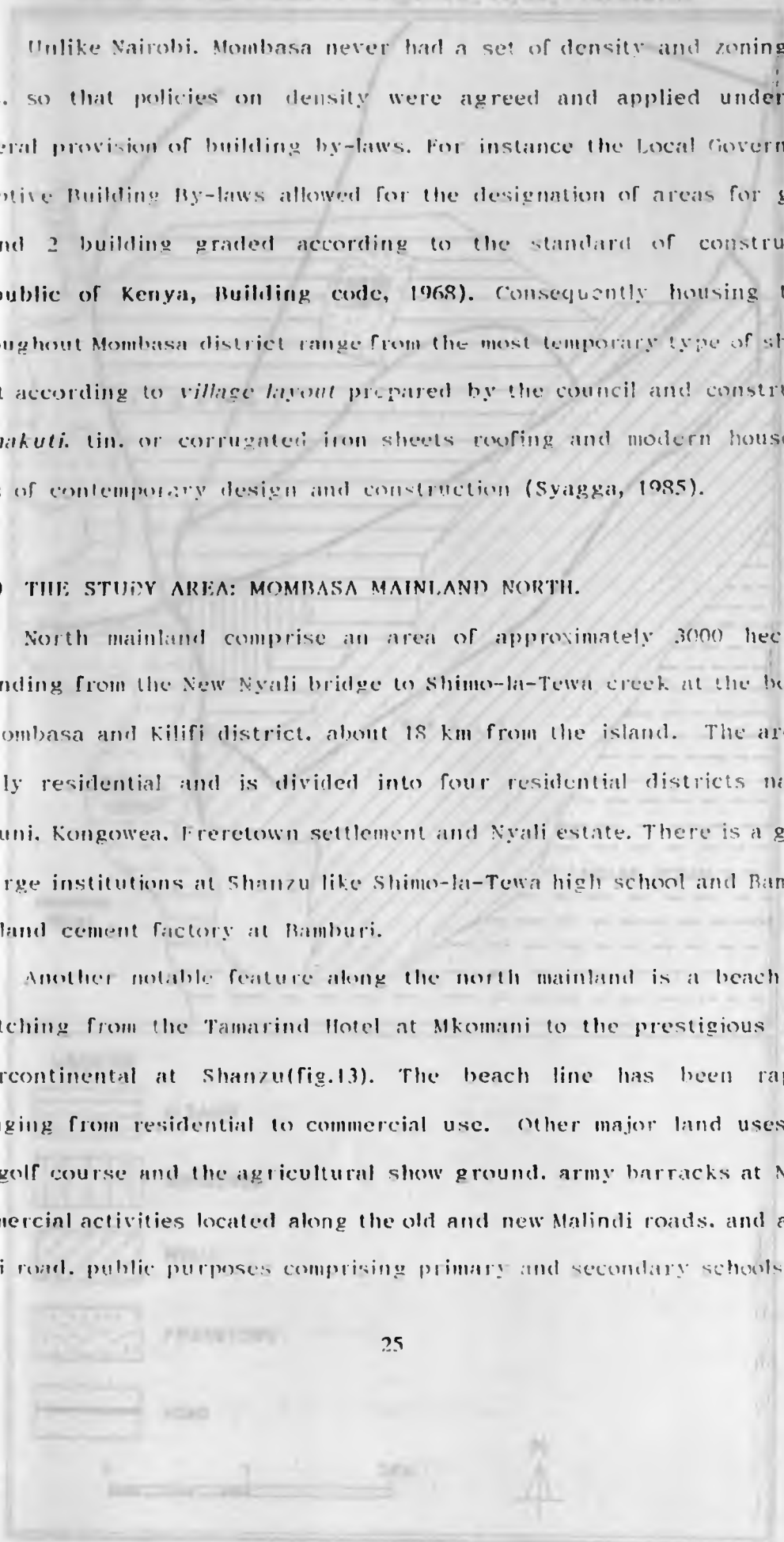


Fig.5 MOMBASA MAINLAND NORTH -  
Study Areas: Kisauni, Kongowea, Nyali, Freretown

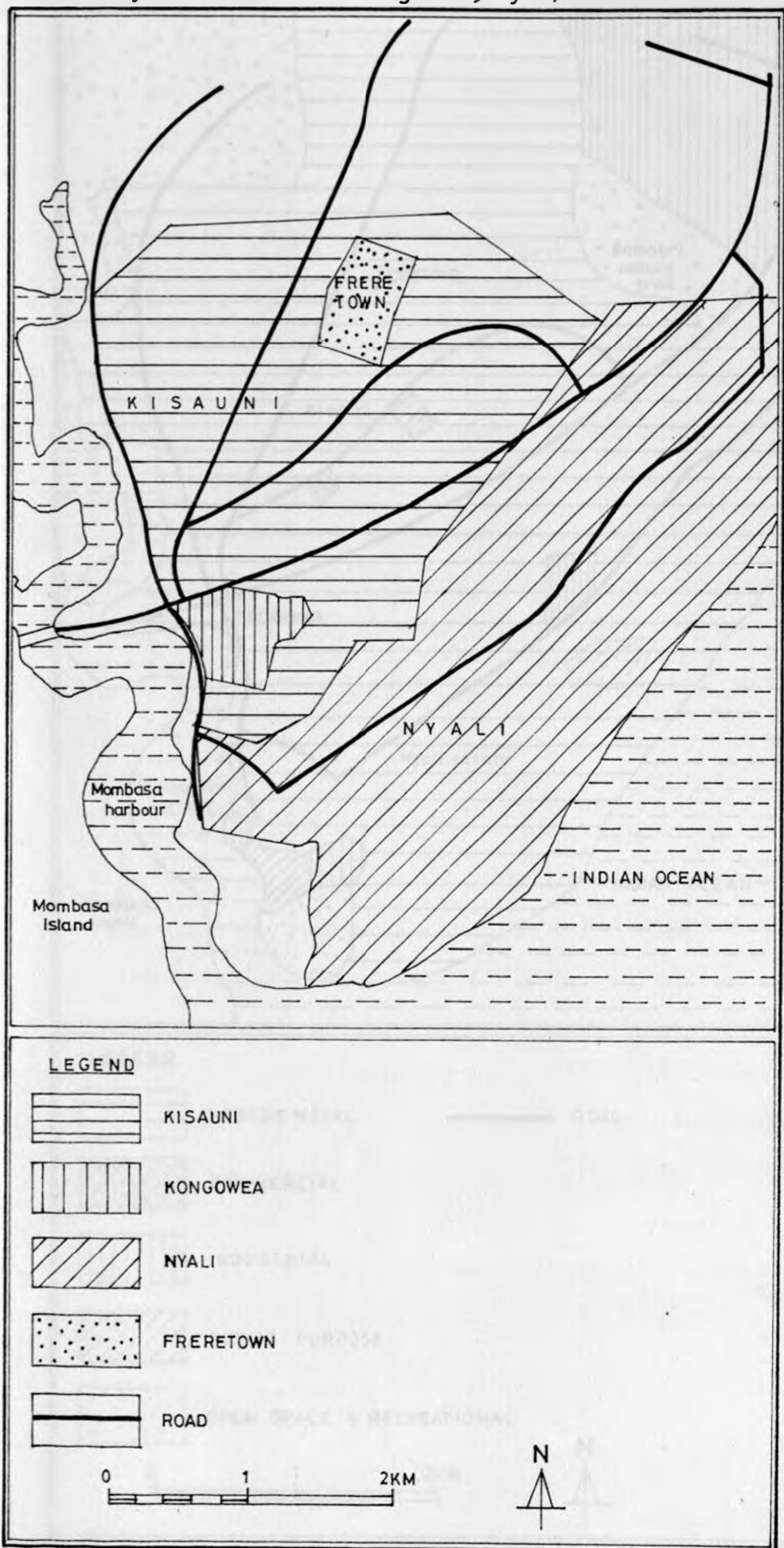
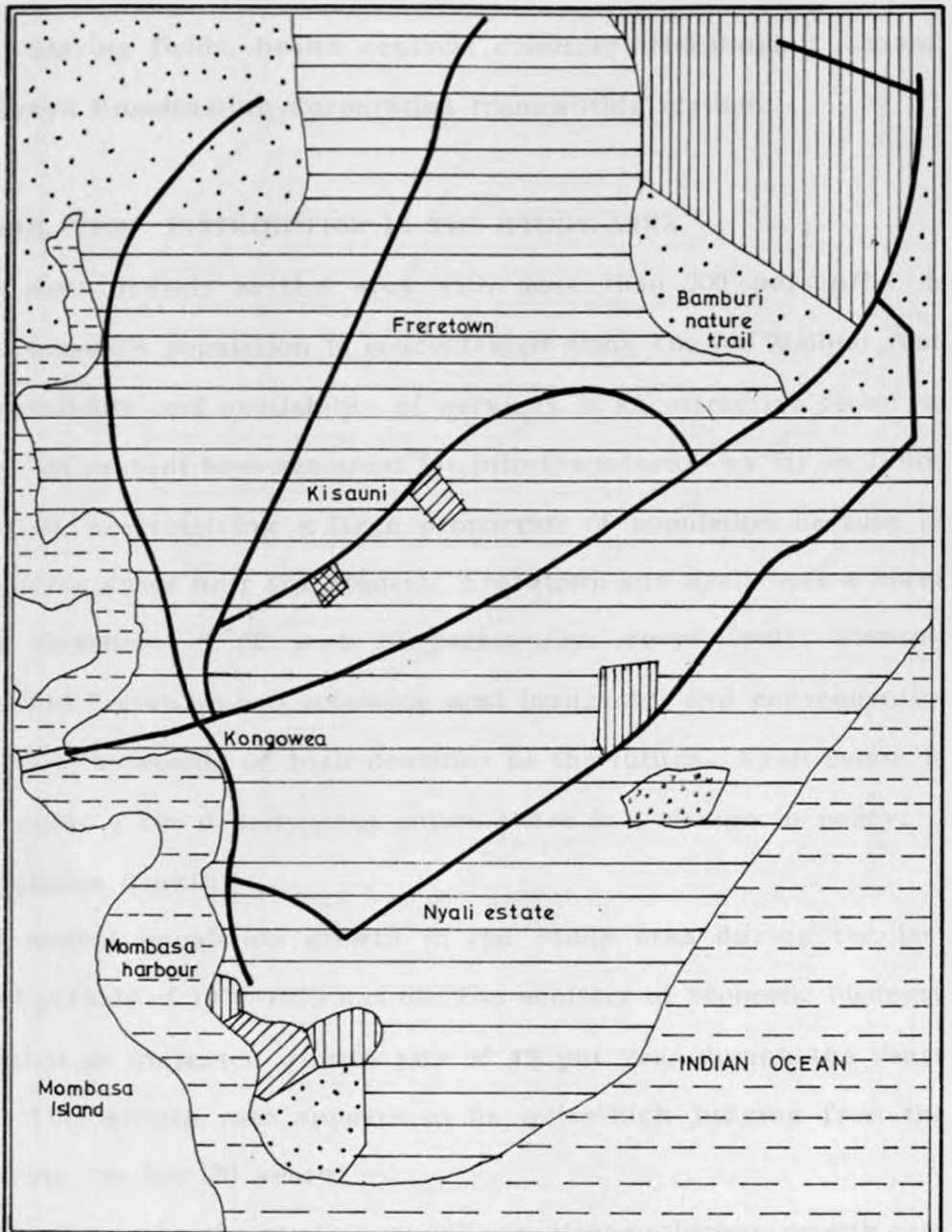
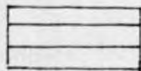


FIG. 6 MOMBASA MAINLAND NORTH -  
Existing landuse



**LEGEND**



RESIDENTIAL

ROAD



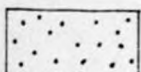
COMMERCIAL



INDUSTRIAL



PUBLIC PURPOSE



OPEN SPACE & RECREATIONAL



FIG. 7 MOMBASA HIGHLAND NORTH -  
Population Distribution

associated playing fields, health centres, cemetery (Makaburini; Kisauni) and the Kenya Broadcasting Corporation transmitting station.

## 2.6.0 POPULATION DISTRIBUTION IN THE STUDY AREA.

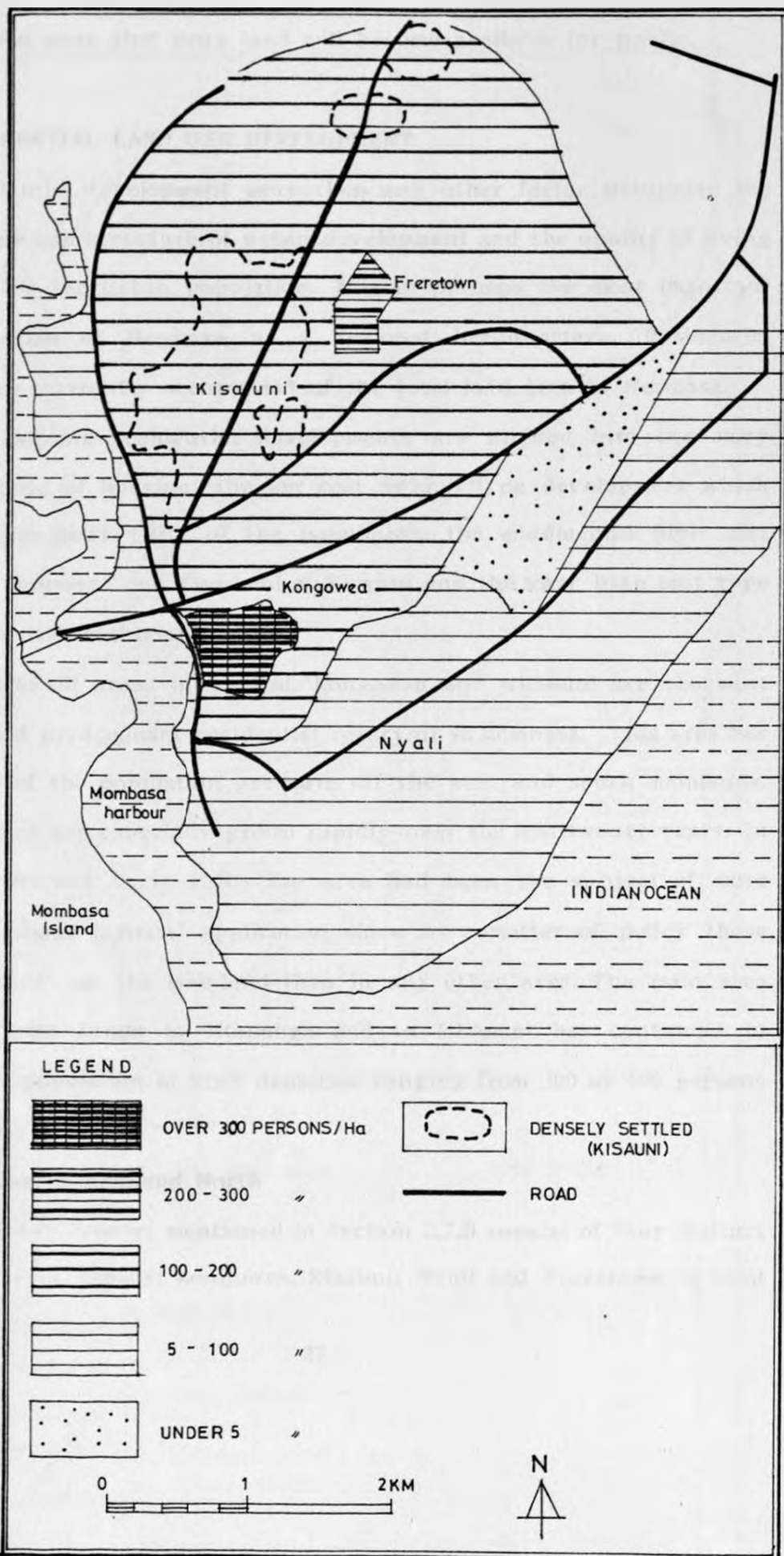
The most densely settled area with more than 300 person/ha. is Kongowea. Kisauni's population is concentrated along the old Malindi road where accessibility and availability of services is an attractive factor to settlement. At present however areas far into the interior, as far as Junda and Magogoni, are receiving a large proportion of population because of lack of building space near the road(s). Freretown and Nyali have a lower population densities of 40 and 10 persons/ha. respectively. Kisauni, Kongowea, and Freretown are receiving most immigrants and consequently, they are likely to remain of high densities in the future. Nyali estate is likely to remain a low density area unless there is a change in policy.

### 2.6.1 Population Growth

The annual population growth in the study area during the last intercensal periods of 1979-1989 was 6%. The ministry of Economic Planning had projected an increased growth rate of 4% per year during the years 1989-1999. This growth rate appears to be quite high judging from the trends during the last 20 years.

The reasons why the study area will experience a higher growth rate than other areas are as follows; first, the area has a lot of undeveloped land which could be used to settle more people. Second the study area is close to the town centre and other places of employment on the island. Finally, if there is a change of policy regarding land ownership in Nyali, it is most likely that population will be better distributed than at present.

FIG. 7 MOMBASA MAINLAND NORTH -  
Population distribution



This will also mean that more land will become available for public.

**2.7.0 RESIDENTIAL LAND USE DEVELOPMENT**

Residential development more than any other factor determine the average form and structure of urban development and the quality of living conditions for the urban population. This is perhaps the most important single function of Mombasa as a regional headquarters. Residential developments currently occupy 45% of the total land area in Mombasa.

The existing residential developments are divided into two very different types of housing: the low cost swahili type development which houses the majority (70%) of the population; the middle and high cost housing at Mtopanga and Kiembeni at Kisauni and the very high cost type at Nyali and its neighbourhood.

The Swahili areas in Kisauni, Kongowea and Mkomani are the most important and predominant residential reservoir in Mombasa. This area has taken much of the population pressure off the west and south mainlands. Kongowea area has especially grown rapidly over the last twenty years. In the late 1960s and early 1970s the area had been the subject of more temporary village layouts' application since as a matter of policy these were permitted on the mainland than in any other area. The main area stretching from Junda to Mtopanga and to Mkomani has continued to accommodate population at high densities ranging from 300 to 400 persons per hectare.

**2.7.1 Housing at Mainland North**

The study area as mentioned in Section 2.7.0 consist of four distinct residential areas namely: Kongowea, Kisauni; Nyali and Freretown. A total

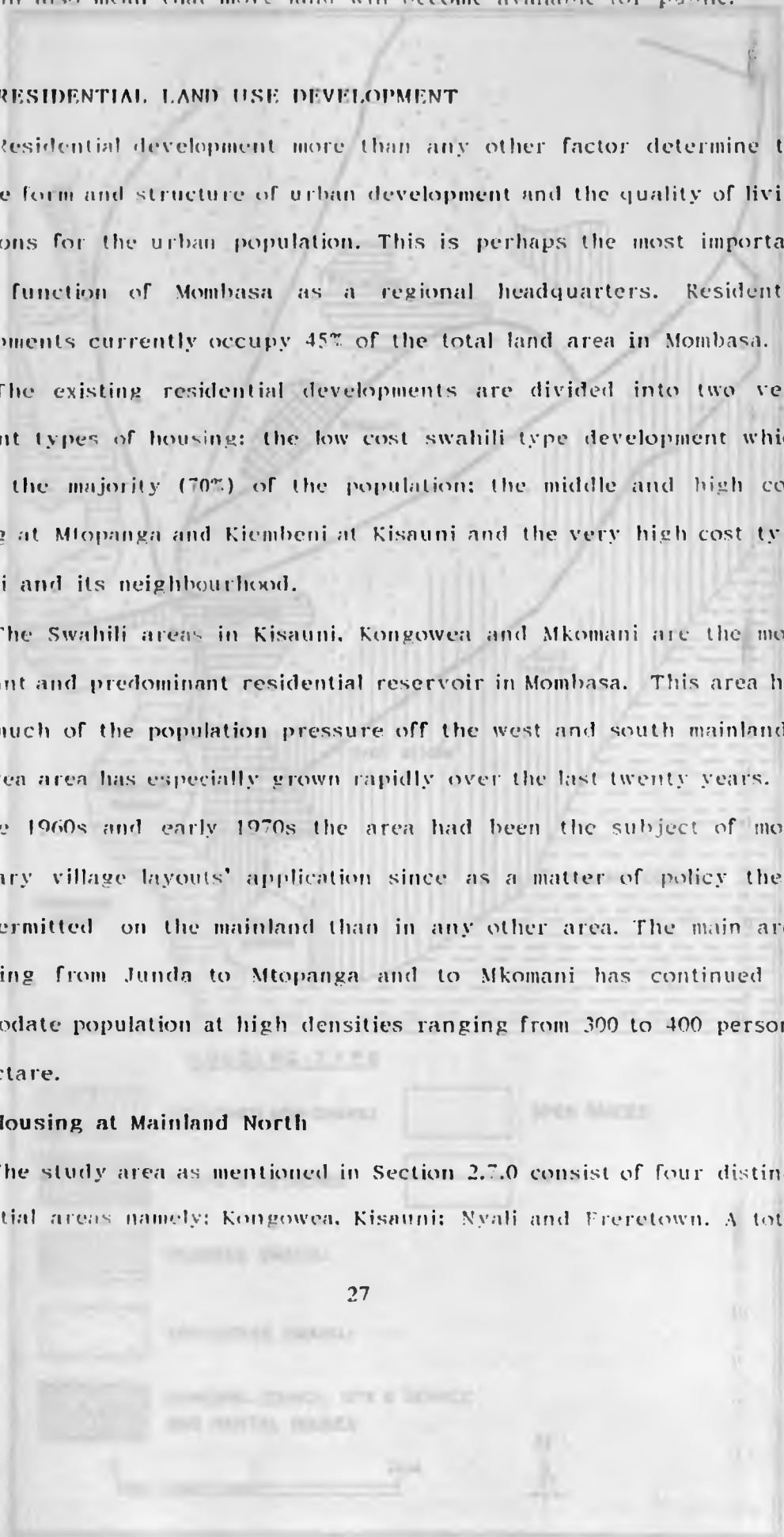




FIG. 8 MOMBASA MAINLAND NORTH HOUSING

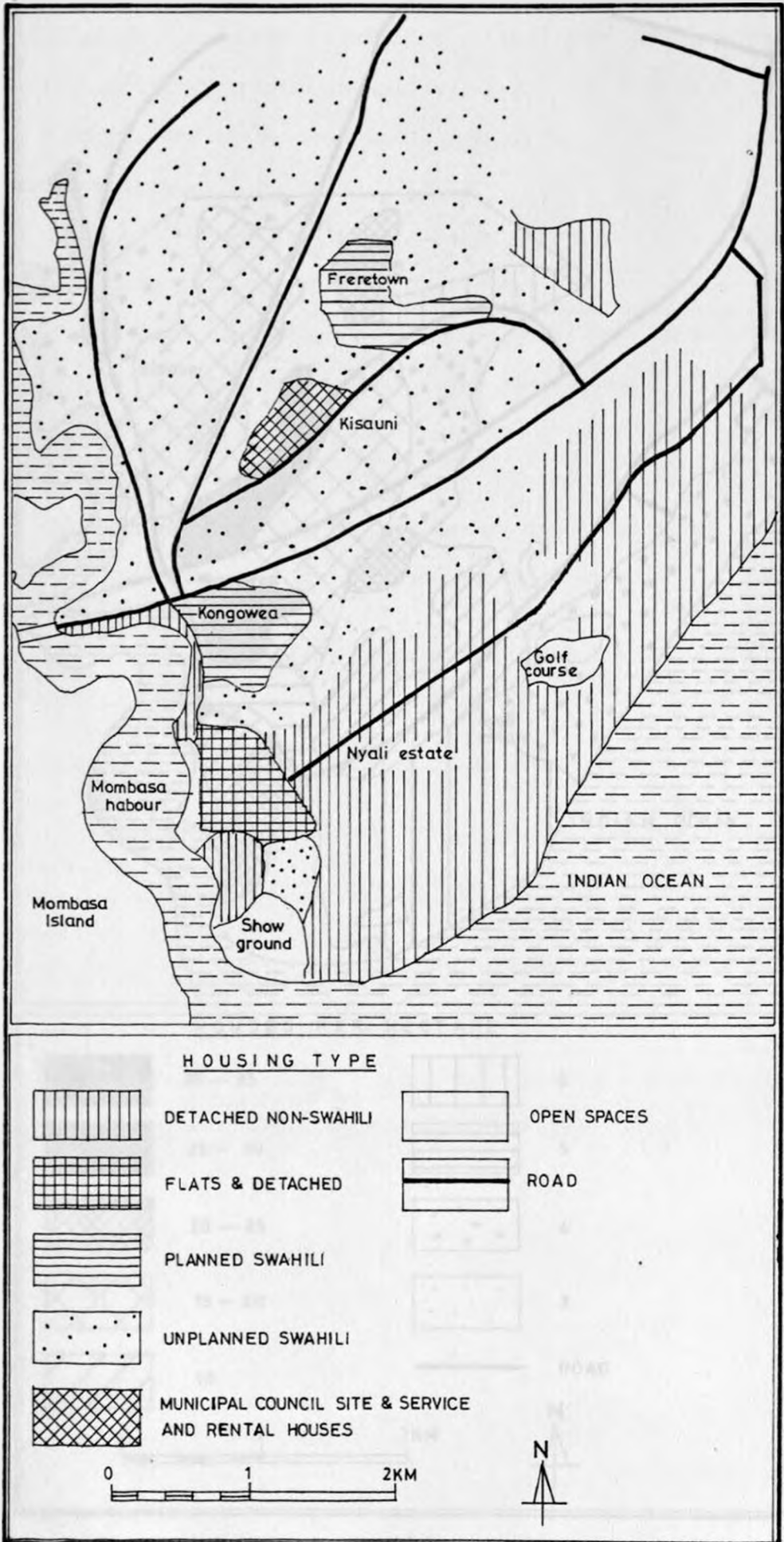
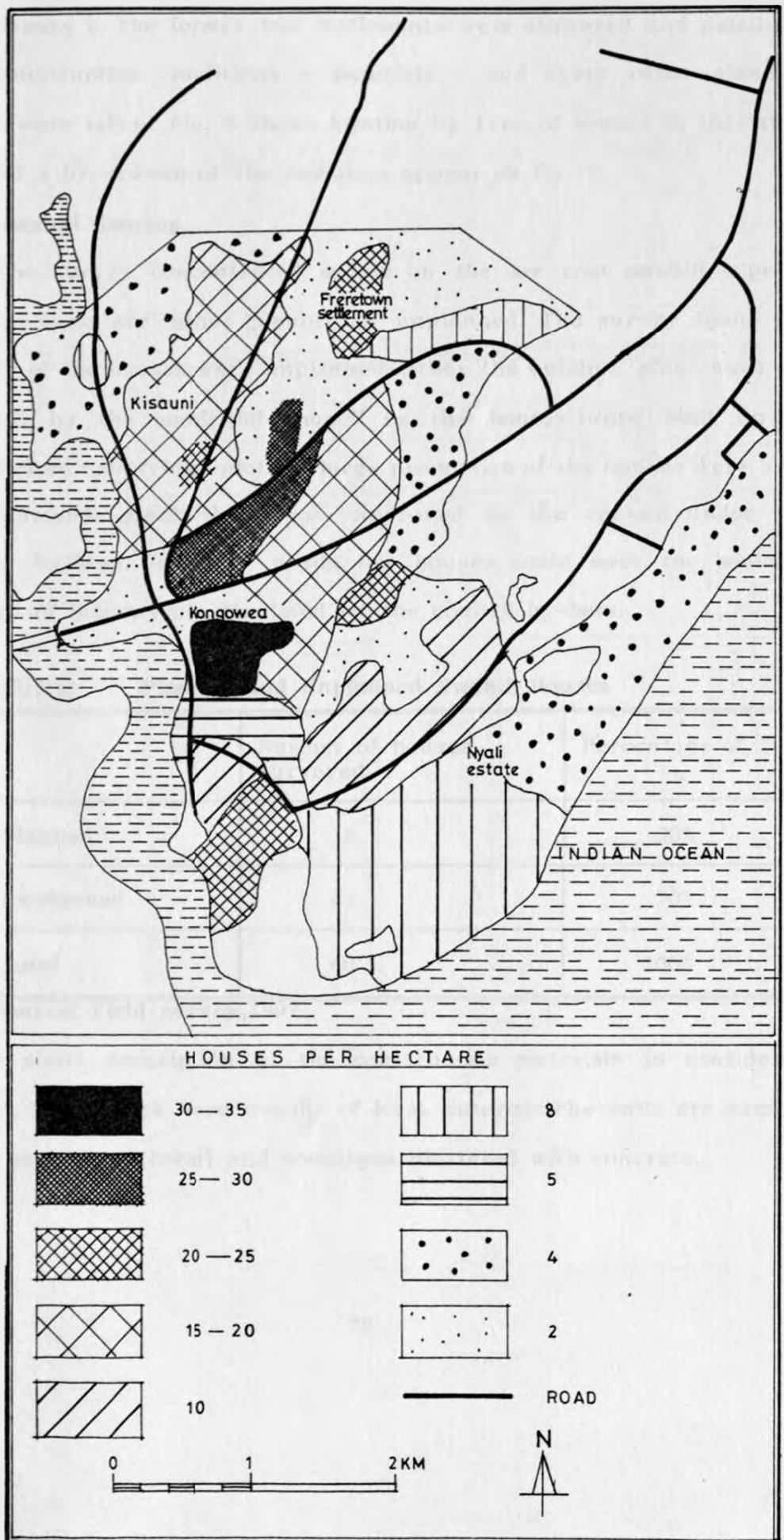


FIG. 9 MOMBASA MAINLAND NORTH HOUSING DENSITY



of 60 houses in the former two settlements were surveyed and details of their construction conditions - materials - and every other planning aspects were taken. Fig. 8 shows location by type of houses in the study area and a breakdown of the densities appear on fig. 9.

### 2.7.2 Swahili Housing

The survey concentrated mainly on the low cost swahili type of housing. These are either planned or unplanned. The survey found out that 70% of the houses were unplanned-either the building plans were not approved by the municipal council or the houses were built on an unauthorised subdivided plots. A large proportion of the houses were built using materials other than those approved by the council under the building by-laws. In other words few houses could meet the minimum standard of housing as stipulated by the council by-laws.

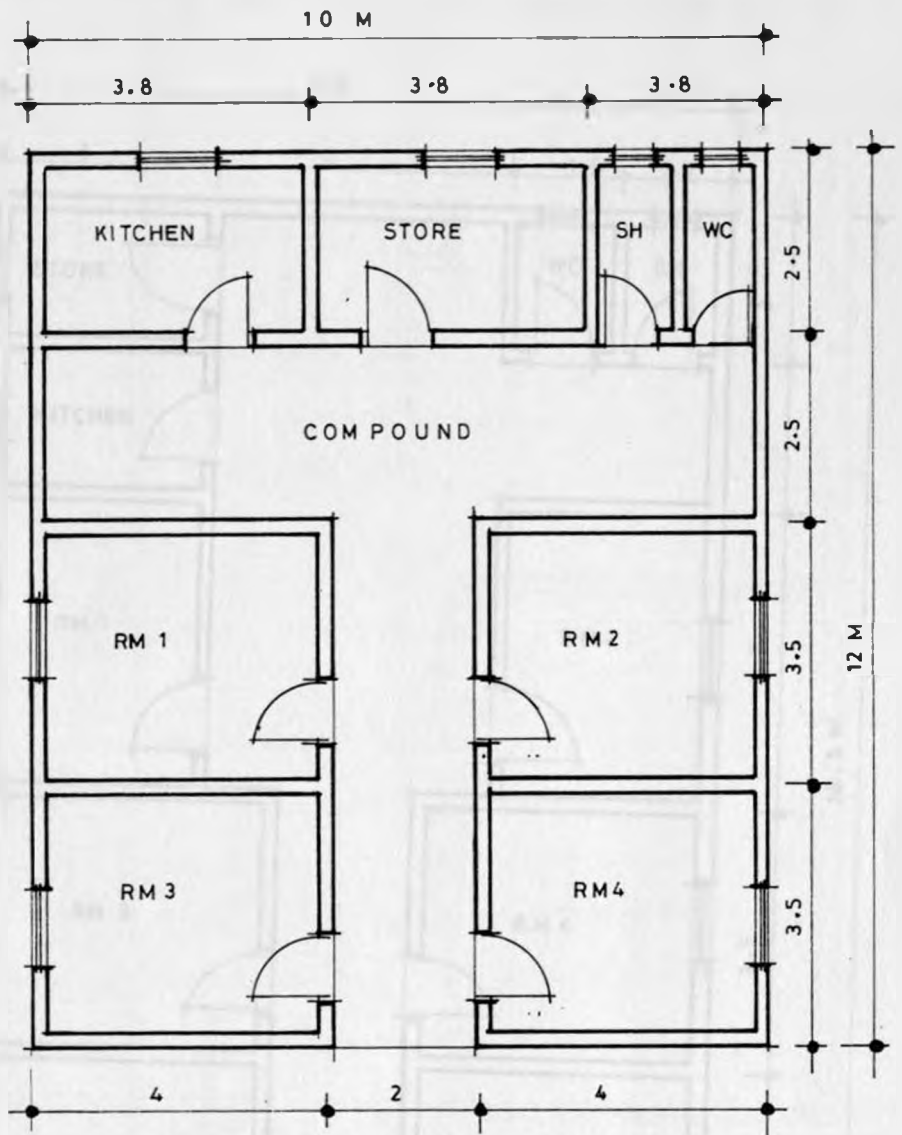
Table 2.7.2(a) Planned and Unplanned Swahili Houses

	Number of houses surveyed	Percentage of Total
Planned	18	30%
Unplanned	42	70%
<b>Total</b>	<b>60</b>	<b>100%</b>

Source: Field survey, 1997

A short description of the construction materials is considered relevant. The houses were usually of local materials. The walls are usually of mud and stone (coral) and sometimes plastered with concrete.

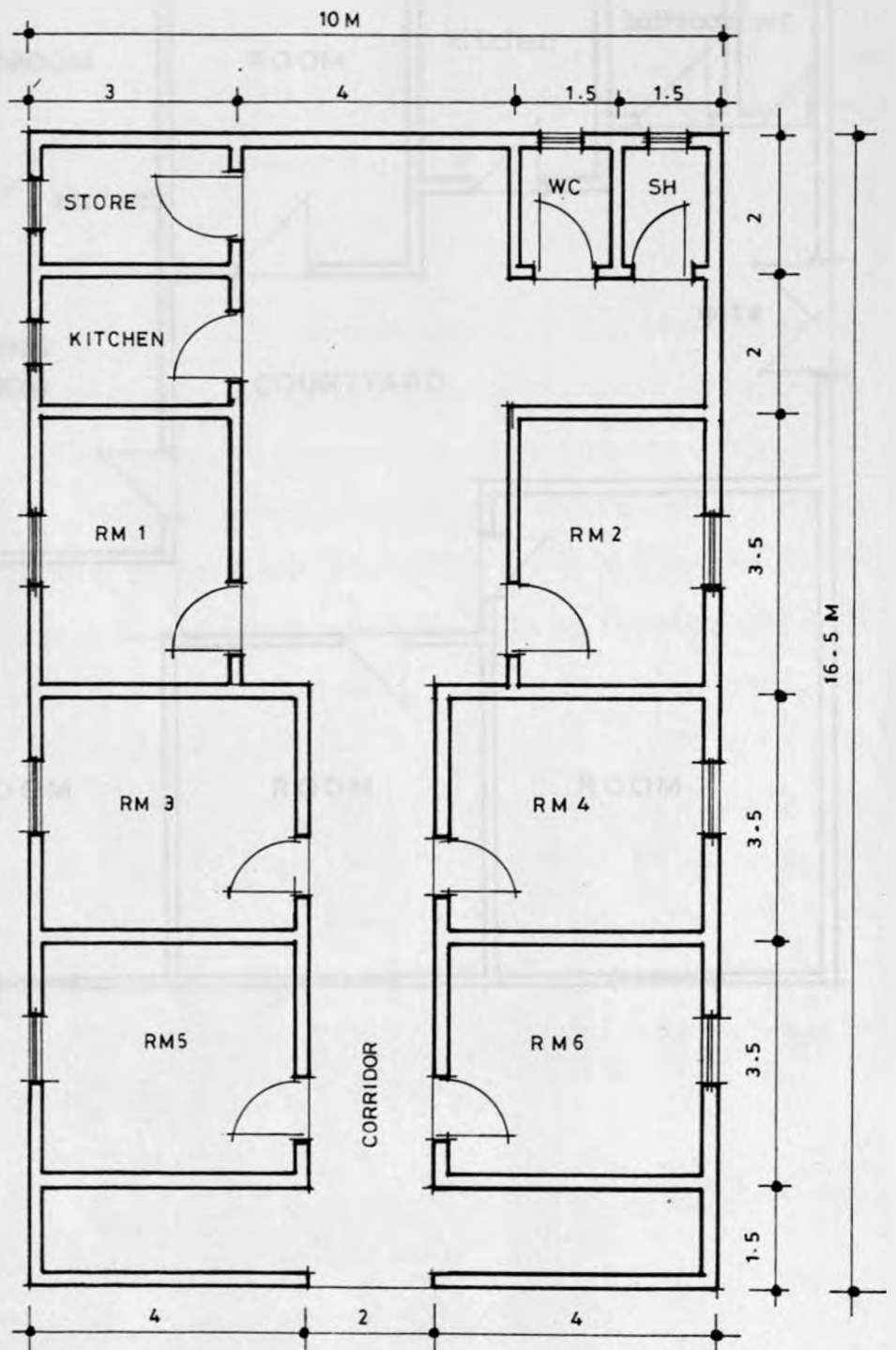
Fig. 10 Four roomed type plan for Swahili house



scale 1:100



Fig.11 Six roomed type plan for Swahili house



scale 1:100



Fig.12 SKETCH OF A MODIFIED SWAHILI HOUSE PLAN

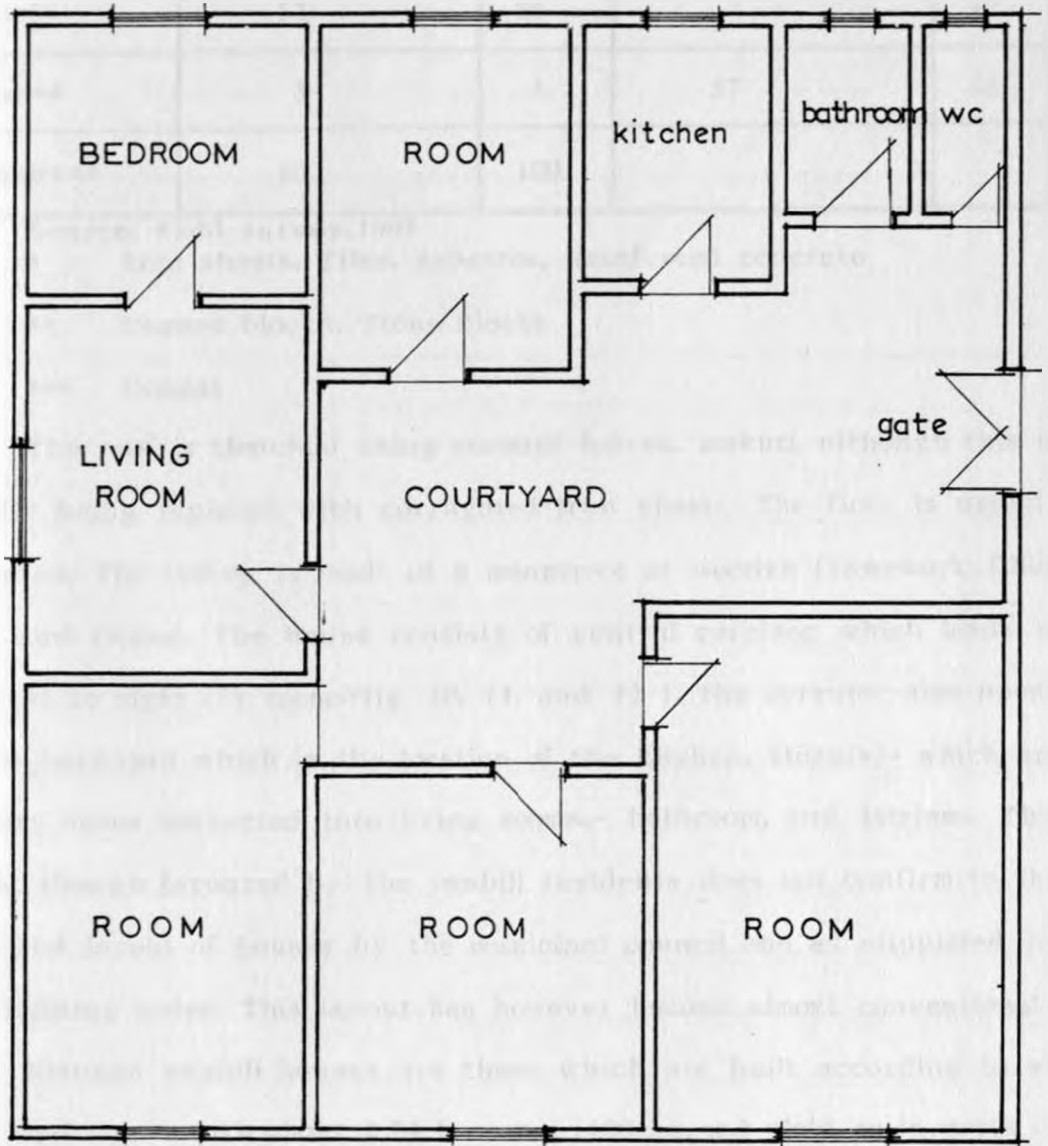


Table 2.7.2(b) Construction Materials

	Recommended Materials	%age	Local Materials	%age
Roof*	53	88	7	12
Wall**	3	5	57	95
Floor***	60	100		

Source: Field survey, 1997

\* Iron sheets, Tiles, Asbestos, Reinforced concrete

\*\* Cement blocks, Stone blocks

\*\*\* Cement

The roof is thatched using coconut leaves, *makuti*, although this is rapidly being replaced with corrugated iron sheets. The floor is usually cemented. The ceiling is made of a mangrove or wooden framework filled with mud (*wasu*). The house consists of central corridor which leads to four (4) to eight (8) rooms (fig. 10, 11, and 12). The corridor also opens to the backyard which is the location of the kitchen, store(s)- which are in most cases converted into living rooms,- bathroom, and latrines. This layout though favoured by the swahili residents does not conform to the proposed layout of houses by the municipal council and as stipulated by the building codes. This layout has however become almost conventional.

Planned swahili houses are those which are built according to an approved layout with about 0.04 hectares (400 sq. m.) plots as in parts of Kongowea or as in Freretown with plots of 0.1 hectares (1000 m.sq) i.e about a quarter an acre.

Table 2.7.2(c) Approval of Building Plans by Council

	Number of Houses	Percentage
Approved by council	25	42%
Not Approved by Council	35	58%
<b>Total</b>	<b>60</b>	<b>100%</b>

Source: Field survey, 1997

Table 2.7.2(d) Plot Coverage

	Number of Houses	Percentage of Total
Recommended (75%)	4	7%
More/Less Than 75%	56	93%
<b>Total</b>	<b>60</b>	<b>100%</b>

Source: Field survey, 1997

However most of the houses surveyed were built on even smaller plots of about 0.03 hectares i.e. 0.07 acres, (14 m by 21 m). In contrast to the planned swahili housing areas, is the spontaneous growth as in kisauni. Codes enforcement has continued to face stiff opposition from the residents and builders in the area due to socio-economic and physical (climatic) reasons. The layout of housing and materials used suit the climatic conditions of the area. Besides the rapidly rising costs of building materials has posed a great limitation to the enforcement of codes. Unfortunately, the haphazard layout of housing has rendered it difficult and even impossible to provide adequate services to these settlements.



A policy of improvement was suggested in 1970 for Kongowea, which was later revised in 1989, which implied that dilapidated houses were to be demolished. This, however, could not be implemented as majority of the houses, then 40%, would have been demolished. There was also the lack of alternative housing. The mushrooming of unauthorised housing has since then continued unabated and the blight of housing increased, to an extent that some of the otherwise habitable areas have relegated into slums.

**Conditions and Construction Materials of Houses.**

Conditions/Materials	Percentage of Total Number of Houses.		
	Male	Female	Total
1. Drained			..
2. Sewered			..
3. (a) Houses with latrine(s)			100%
(b) Houses with electricity			90%
(c) Houses with plastered walls			50%
(d) Houses with stone walls			90%
(e) Houses with Iron sheets			88%
(f) Houses with thatched roofs			10%
(g) Houses with tin roofs			2%
(h) Houses with earth floor			..
(i) Houses with concrete floor			90%
(j) Houses with tiled floor			1.6%
4. Tenant occupied houses			98%
5. Owner occupied houses			2%

Mombasa is most fortunate than most rapidly developing urban centres in having a form of housing which is of a sufficiently high

standard and low cost to avoid most of the worst housing conditions which usually accompany rapid urbanisation. The existing housing and general living conditions in Mombasa is of much higher standard on the whole than in other high urban centres in Kenya.

A survey conducted by the municipal council, planning department in 1989 found out that Mombasa's population was accommodated in the various types of housing in the following proportions:

**Table: 2.7.2(e) Population According to Housing Type**

	Island	Mainland			Total
		North	West	South	
Public flats	15%	1%	5%	2%	8%
Private flats	25%	2%	2%	2%	15%
Detached mixed	12%	5%	3%	5%	8%
Old town Planned	10%	-	-	-	5%
Swahili	28%	18%	5%	-	17%
Unplanned Swahili	10%	75%	85%	91%	47%

Source: M.M.C. planning Department.

Swahili housing is particularly favoured as a form of development on the small to medium sized freehold plots which have been the subject of the numerous recent unplanned layouts on the mainland. The north mainland (study area) has the largest area of this type of freehold hand stretching from Junda, to Mkomani and from Tudor Creek to Mtopanga and Utange. The west and south mainlands have a small proportion of freehold plots mainly in the Likoni/Mtongwe areas. In the west mainland, the

Changamwe plateau had a considerable size of free hold land but much of which was acquired for industrial and airport expansion. (Yahya, 1985).

Unplanned housing developments in these freehold land is likely to continue at an increasing rate. To accommodate the large number of people, these areas have been developed to densities approaching those in the island. The average gross density of the areas at present is approximately 310 peoples per hectare as compared to about 500 people per hectare in the central island. These densities have been achieved with single or storey swahili houses, with flats or with modified 2-storey swahili houses.

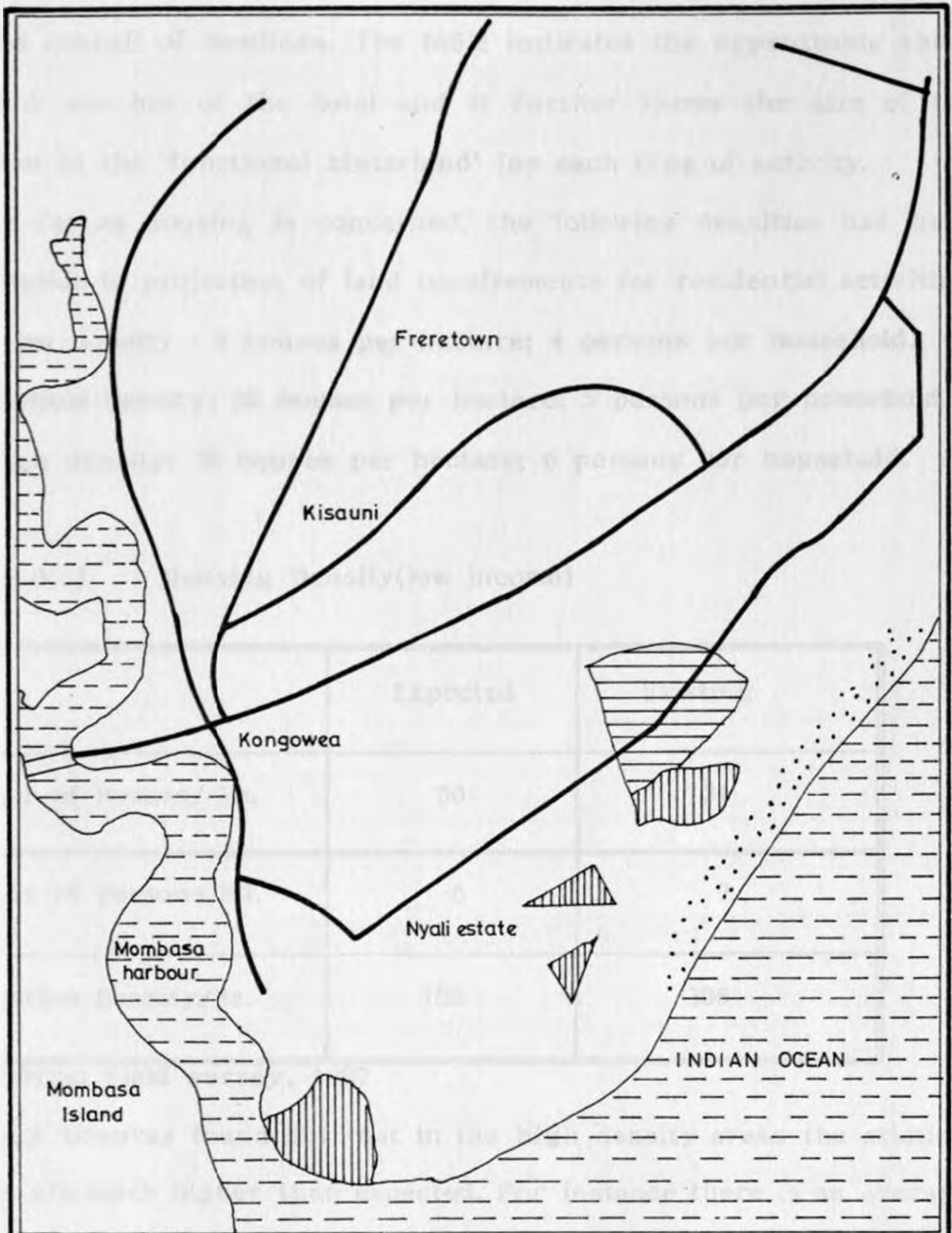
In view of the above its important that comprehensive advisory plans be prepared similar to those of Chaani, Changamwe and Mikindani, so that development may take place according to a coordinated plan. The plans should take into account the likely population growth in each of the areas and the type and size of urban facilities which may be required to serve this population.

**2.8.0 PLANNING STANDARDS FOR THE AREA**

The main purpose of suggesting planning standards is to provide a frame of reference for decisions and policy making. Standards should not be set for prestige only, but must have some reference to their implementation success and capacity for modification in line with socio-economic, physical and technological change.

However, table 2.8.0(b) below suggests what was assumed to be reasonable planning standards for the area. They were based on a survey of the land use distribution in 1972 and which was revised in 1989. The 1972 standards were based on analysis carried out in the planning section

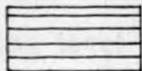
FIG.13 MOMBASA MAINLAND NORTH -  
Recreation and open spaces



**LEGEND**



RECREATION



OPEN SPACES



BEACHES



ROAD



of the University of Nairobi planning department and adopted by the municipal council of Mombasa. The table indicates the approximate share each land use has of the total and it further shows the size of the population in the 'functional hinterland' for each type of activity.

As far as housing is concerned, the following densities had been applied in projection of land requirements for residential activities.

Low density : 8 houses per hectare; 4 persons per household.

Medium density: 20 houses per hectare; 5 persons per household.

High density: 30 houses per hectare; 6 persons per household.

Table 2.8.0(a) Housing Density(low income)

	Expected	Existing
Number of Houses/ Ha.	30	34
Number of persons/HH.	6	9
Population Density/Ha.	180	306

Source: Field survey, 1997

This study however found out that in the high density areas the existing densities are much higher than expected. For instance there is an average of 34 houses per hectare with an average household size of 9 bringing the densities to 306 persons per hectare.

It should be noted that the application of the above standards were based on the level of development in the study area then.(1972). and the projected population up to the year 1990 when population was expected to

have reached 115,500.

Table 2.8.0(b) Planning Standards for the Area.

Land use	Existing land use as % of total land	Population to be served	Proportional standard (ha.)
Educational: Nursery school Primary school Secondary	5.0%	3000	0.3
		5000	4.5
		20000	5.5
Health	1.6%	20000	0.5
Transport	10.0%		
Industrial	6.0%	10000	20*
Commercial	7.0%	5000	1.0
Public purpose: Community centre Worship	1.4%	25000	0.5
		25000	0.5
Public utilities	3.0%		
Residential	43.0%		
Recreation	13.0%	500	0.4**
Undefined	10.0%		

\* This area was proposed for small non polluting workshops(jua kali)

\*\* The standard is applied when planning for residential areas.

Source: Mombasa Municipal Council Planning Department

### 2.8.1 Building Standards and Land Use Control.

A major consideration in the production of houses, particularly for those who seek to introduce new materials, standards and methods of construction, should be the network of controls that have grown up over the years to ensure public health and safety, fire protection, structural strength, investment security and balanced community relationships in housing. Obviously these are appropriate subjects for regulation or that

the public benefits to be expected from such regulations amply justify a reasonable degree of added complication and cost for producers.

### 2.8.2 Relevance of Housing Standards

The subject of housing standards is interwoven into the whole fabric of the housing problem. In fact in the absence of the concept of standards, there is no housing problems at all. Minimum housing standards are incorporated by law and regulation in local police power of control. The term standard has acquired many connotations but most frequently implying minimum situations; with the situations expressed in physical terms (Wheaton and Migram, 1986). It is the purpose of this study to emphasise the point that only standards which have relevance in housing programmes are those which have their basic expression in human values and that the concept of standards has meaning at all levels of housing quality.

Housing is both a 'situations' and a 'process'(Wexler and Peck, 1985). As a 'situation' housing is a current set of relationships between a person or group of persons of a given social, cultural and economical attributes and a certain immediate physical environment - the structure and artifacts - together with the associated parcel of land and the land uses, and activator which comprise the community.

Dynamically housing is a 'process' - of investment, of the production of usable space by developers and manufacturers of housing products. Its a 'process' of utilisation and consumption by the occupants of housing space. The problem of housing therefore lie in the 'unsatisfactory' living situations of individuals and families, such that if the occupants and consumers of housing are 'satisfied' with the housing situation, then we

could as well discount housing problems regardless of the standard of housing.

A primary objective of housing legislation and housing programmes is to raise housing standards, to modify or create housing situations so that they are 'acceptable' to both the consumers and the legislators. Housing standards which are incorporated in police power controls, or which are implicit in the assumption that the public housing device is necessary, are standards of minimum social acceptability. All these arguments and the results which came out of this study demonstrate the inadequacy of that popular connotation of the term 'minimum' standards - the inadequacies demonstrated by the inability of these standards to guide land utilisation, particularly in housing development, in Mombasa.

### 2.8.3 The Basis of Standards

It is argued that the basis of standards determination should be found in human values. Houses are built for people and therefore the basic test of housing quality lies in the effects upon people. It should follow therefore that the judgement of housing situations of space and space arrangements of design features and equipment, items of neighbourhood and environments are only valid when related to the people and families who are exposed to them. It is futile, therefore, to contemplate the continued setting of standards by legislative Acts, by judicial decisions, by administrative determinations, by business judgements of builders and bankers and by the pencil of architects and urban planners, standards which may perpetuate socially dangerous living conditions for millions of people.

In the housing policy of 1968, for instance, the government declared



that national welfare requires... 'housing production and related community development sufficient to remedy the serious housing shortage'... to eliminate... 'substandard and other inadequate housing'... and to realise the... 'goal of a decent house and suitable living environment for every Kenyan family...'. Unfortunately the housing legislation required, as a condition, adherence to positive 'standards' of some sort as condition of government and donor aid'. This was an example of externally determined policies and standards which have failed to achieve results.

Man made physical environment is the sum of a number of distinct and variable elements and what planners and policy makers should know is the specific effect of a particular factor in the environment over which they have some bona fide control. The effect of land use policy and planning likewise extend to the field of social organisation and human relations, at the community level.

Local governments have for long been responsible for setting restrictive housing standards to 'protect' health and safety and the provision of various services that help to establish land use and social patterns. But now they are being faced with the challenge of coming up with (a) more positive zoning and planning controls so as to minimise the undesirable eventualities of strict and rigid housing standards like slum clearance and urban blight. These are emergency remedial measures which have not helped solve the problem. Public initiative at national level will doubtless be required to revise wholesale the building codes and standards as a matter of agency.

#### 2.8.4 Enforcement of Building Codes in the Study Area

Codes are nationally legislated regulations governing or defining the way new structures are to be built and the materials to be used. They may also be applied to the maintenance and improvement of existing buildings. Building codes are of two types: detailed and general codes (sec 4.3.1). Direct public regulation of land and of the construction of building is carried out under the so-called police power through which a government exercises its function of assuring the health, safety and general welfare of its citizens. Generally speaking the central government has delegated within specified statutory limits, the police power to the local municipal governments. Local building codes are the most direct and obvious example of local police power regulations in the housing field.

Building codes have been generating heat for years. Scholars regularly claim that prevailing codes are obsolete or arbitrary (Kelly, 1986; Syagga, 1985; Yahya, 1985). In fact Kelly (1986) observes that the most expensive thing about today's house is the local building code under which it has to be erected. In part, Kelly further argues, this difficulty stems from the natural tendency of many local building officials to 'savour the most conservative practice of the conventional system under which they have developed their experience'. A major factor is the autonomy of local government which tends to encourage a wide divergence of local standards and to put many difficulties in the way of broad definition of national standards.

The situation with respect to codes enforcement and inspection in the study area was found to be as follows: even in planned areas, where a uniform code applied, there were delays in plan approval and project

inspection. Building materials and plot coverage were negotiated on a case to case basis with the municipal officials, and the same applied to the building layout reminiscent of the old village layout system. In the unplanned areas majority of building plans went unapproved and the building materials were chosen by the builders according to their financial ability thus rendering the codes useless! The main reason being that the cost of materials required by the codes exceed the cost of safe, available substitutes, with the eventual resultant effect of preventing the development of an efficient housing market easily affordable to the locals.

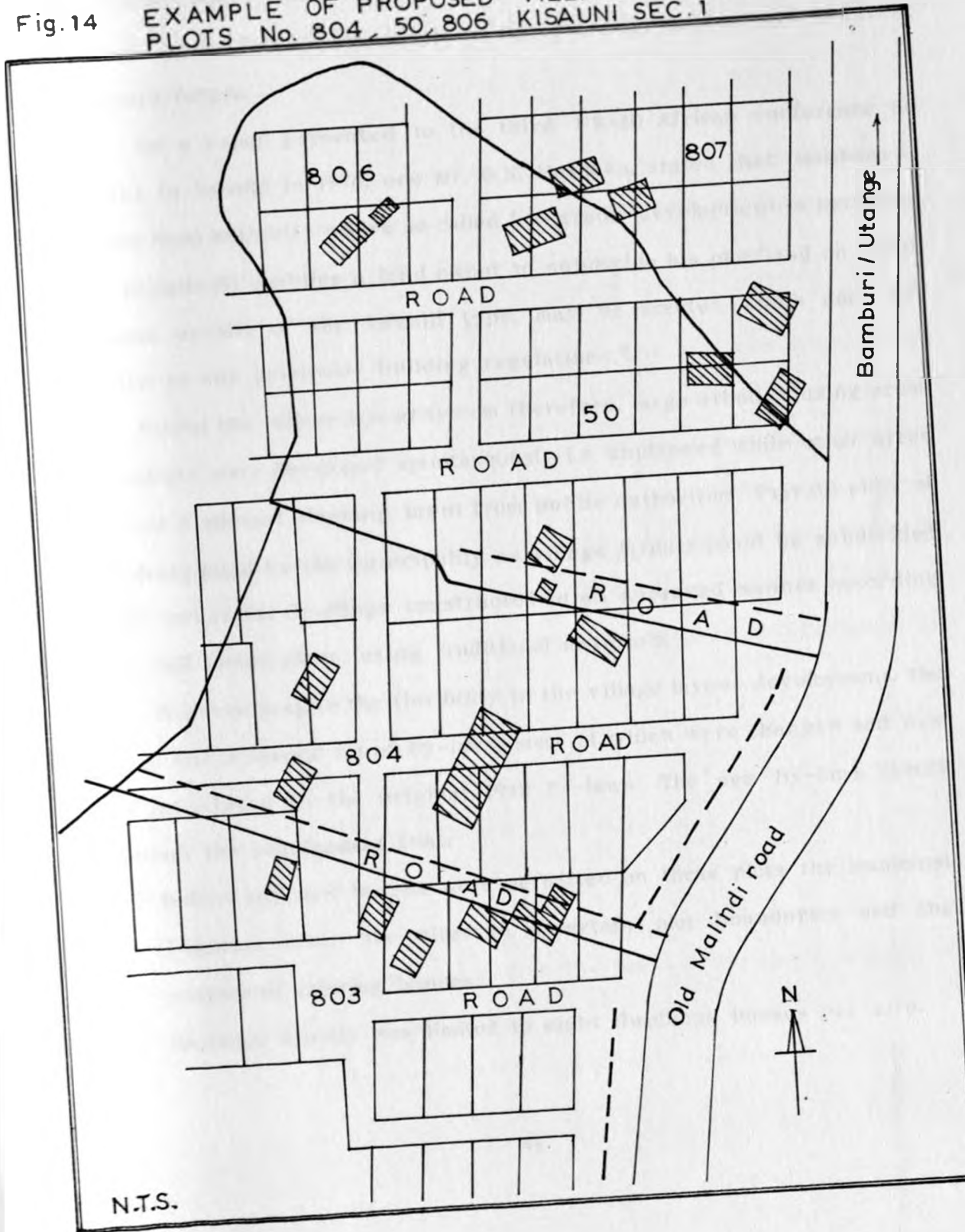
### 2.9.0 THE VILLAGE LAYOUT SYSTEM IN MOMBASA

The *village layout* schemes were started in the early 1930's as a response to the need for cheap accommodation for labourers at the port and the surrounding industries which were springing up. These were started in the island but later, in the late 1960s, and early 1970s, extended to the mainland areas.

Under this scheme, the erection of houses and provision of services allowed for a stage wise building and improvement process as finance and labour became available. Planning and approval procedure were reduced to a minimal, thus avoiding undue stress on the scarce municipal planning and administrative capacities. This type of development was referred to as the 'minimum grade' housing development (Guido, 1978).

There were efforts to incorporate these schemes into the 1979-83 development plan but these efforts failed as it was feared that it would encourage squatting and mushrooming of illegal housing developments. Proponents of this scheme argued that 'no grade' or 'minimum grade'

Fig.14 EXAMPLE OF PROPOSED VILLAGE LAYOUT FOR PLOTS No. 804, 50, 806 KISAUNI SEC.1



developments, compared to uncontrolled squatting, would facilitate the gradual introduction of services without the cost and social disruption of demolition. The premise was that legal occupation of a plot, even on leasehold terms encourages people to improve their houses and to invest in secure future.

In a paper presented to the third USAID African conference on housing in Nairobi in 1976, one Mr. G.N. Matheka, stated that 'Mombasa is the one local authority where so called 'no-grade' development is permitted (was permitted) enabling a land owner to subdivide his plot/land on which a house usually of the Swahili type, may be erected which does not conform to any particular building regulations."

Under the *village layout* system therefore, large urban housing areas in Mombasa were developed spontaneously i.e unplanned while other areas received a minimal planning input from public authorities. Private plots of land designated by the municipality as *village layouts* could be subdivided by the owner for dwellings constructed in an approved manner according to Swahili house plans, using traditional materials.

However despite the flexibility in the village layout development, the council had a special set of By-laws, some of which were changed and new ones introduced to the original 1948 By-laws. The new by-laws (1968) included: the requirement that:

- 1) Before any new houses were permitted on these plots the municipal Engineer visits the sites to ascertain plot boundaries and the number of existing houses.
- 2) Maximum density was limited to eight dwellings houses per acre.

- 3) The actual siting of new houses is made subject to the municipal engineer approval in order to allow for the necessary alterations which may be required for future development and
- 4) Land owners permit the laying of services in the road and path reservations.

The minimum plot size was then increased to 360 sq.m. (approximately 24 x 15 m) and maximum plot coverage 50%, road reserve approximately 15 m and foot path approximately 6 m. The layout plan on figure 14 may illustrate application of these rules in 1971.

Historically these areas were zoned and planned first under 1926 Town Planning Scheme in Mombasa Island. Minimum plot size then applied were 1/20 acres (200 sq.m). Planning standards were restricted to the plot sizes and road reserves. Reservations for community facilities were only considered if already in existence in the urban development plan. Due to the existing irregular plot shapes, problems of overlapping arose when the newly demarcated plots were drawn on regular grid as shown in the layout plan. In this case it was left to landowners to arrange an adjustment of plot boundaries amongst themselves.

Since the council prepared the layout plan, no official approval was necessary and the land owner could start to peg out parcels of land and to rent them out to individuals. Individual developers then had to submit house plans, either designed by themselves or by hired draughtsmen. In almost all cases these represented the traditional Swahili house averaging 4 to 6 rooms and services separated in the back of the plot consisting of a pit-latrine, kitchen and storeroom.

Ironically the *village layout* schemes were suspended in 1974 but

since then housing development have continued to take place spontaneously in disregard to the new regulations. The provision that developers submit plans either approved by themselves or hired draughtsmen has continued to date, even when preparation and approval of plans has to be done by the council. At the same time while the council has a recommended layout, it is not strict with the siting of housing developments. Unfortunately those houses or structures designated as temporary under the *village layout* turned out to be 'permanent' making demolition difficult besides the fact that most of the land was freely held. These factors and others have contributed much to the present pattern of development in Mombasa.

and it is also to that the proposals should be given more priority. The consideration of a plan should also take into account the fact that the land is not owned by the council but by private individuals. The council has to be more strict with the approval of plans and also to be more strict with the siting of housing developments. The council should also be more strict with the siting of housing developments. The council should also be more strict with the siting of housing developments.

The development of housing in Mombasa has been a long process. It has been a process of growth and development. The council has to be more strict with the approval of plans and also to be more strict with the siting of housing developments. The council should also be more strict with the siting of housing developments. The council should also be more strict with the siting of housing developments.

## CHAPTER THREE

### 3.0.0 PHYSICAL PLANNING AND DEVELOPMENT CONTROL IN MOMBASA

The conventional physical planning and land use control functions are discharged by the Director of Physical Planning and the commissioner of lands at national level. However at the local level, the District Physical Planner, District Land Registrar, and the municipal council share these responsibilities. The Physical Planning Department(P.P.D) in collaboration with the municipal council provides the greatest contribution in this area.

It was noted, however, that little or no effort has been made in Mombasa to address the land use control and regulation deficiencies. The object of a plan is that its proposals should be put into practise. The implementation of a plan depends upon the developments carried out by many agencies, both private and public, complying with the plan proposals. Experience has shown that to be effective any administrative system seeking to plan and regulate the use and development of (urban) land requires not only strong statutory codes, regulations and specifications, but also the correct social and political climate to ensure compliance and control.

While development control seeks to ensure that implementation of development projects conform with (the) plan proposals, development control measures are not backed by effective powers of policing and 'coercion'. Many times, as is evident in Mombasa, planning regulations and the zoning by-laws have proved to be toothless. It is expected that development control measures would give greater freedom to harmless developments but at the same time guard against harmful developments by carefully assessing and processing all development application.



Unfortunately the implementors (largely the local authorities) have meagre force of inspectors who can go around discouraging illegal developments, a fact which developers have capitalised on to flout regulations.

The role of physical planners, as evidenced by this study, is not understood by the public. At the same time the residents are not aware of the legal (land use) control measures that affect them. Work meant for the physical planner is thus carried out by the wrong people. For instance 70% of the respondents said that their subdivision plans were drawn and approved by people other than physical planner or surveyors, while 60% had their building plans drawn locally, that is, by hired draughtsmen. Most of the subdivision work was done by chiefs, and neighbourhood headmen.

**Table 3.0.0 Awareness of Control Measures**

	No. of People	Percentage
Aware	19	32%
Not Aware	41	68%
Total	60	100%

Source: Field survey, 1997

The services provided by these quasi professionals are popular because they are cheaper and faster than those provided by professionals. The lack of planning and control of development from the relevant authorities has resulted in the proliferation of sporadic and unauthorised developments in Mombasa and its environs.

There were cases of land for open spaces being annexed by power groups for uses other than that stipulated in the physical development plan. This has occurred as a result of physical planners being used as rubber stamps to development proposals that did not initially call for their

professional advice. This, coupled with lack of effective link between planning and implementing agencies, has created an atmosphere conducive to flouting land control measures. In addition the land planning law does not empower the physical planner to oversee to the implementation of the plans, hence the drawbacks manifest in unco-ordinated and unplanned urban developments.

Deficiencies of skilled planning personnel in principal development control agencies such as the P.P.D., the local authority and the land control board has resulted in misinterpretation and misapplication of the laws concerned with land use control issues.

### 3.1.0 THE IDEOLOGY OF CONTROL

This discussion will be in terms of what is controlled by urban planners i.e land uses developments. One of the puzzling aspects about planning is the apparent random diversity of its application, the feeling that 'anything goes' (Ratchcliffe, 1976). Ratchcliffe further observes that certain objectives have been absorbed by planning merely because they cannot be pursued by any public authority under its powers. In such circumstances, 'planning acts as a long-stop for balls which cannot be fielded by other public authorities.'

Physical entities and systems are more amenable to discussions of the objectives of control, the means of control and to demonstrations of efficacy of control (Meloughlin, 1973). Psychologically and philosophically control is looked upon as a means of achieving desired explicit order, for clear cut stable relationships and maintenance of steady state. If this is translated into political and sociological terms we can identify two types

of ideologies in planning: the conservative and the radical(Litchfield, 1996). The conservative type seeking adjustments of a moderate and incremental kind in order to adjust the output characteristics of the existing social systems. The radical type seeks a more fundamental changes including restructuring of the social system itself. Contemporary planning, in its social context, interprets control as a set of activities which seek to maintain the existing order rather than to initiate and even sustain radical changes(Simmie, 1981).

Simmie recalls how the original radical concern of Geddes, for instance, were quickly narrowed into a physical and legal framework thus reducing the effectiveness of control as an instrument of change for overcoming social evils. This has prompted many of the young generation of planners like Gans(1978) and Davidoff(1975) to ask searching questions about the role of control in government and society. A good case can be made for looking at the contemporary practise, the profession, the statutory framework, the planning agencies in central and local government as maintainers of existing patters of order. To many people, among them Jane(1971) and Sennet (1980) social evils are associated with disorders, with the operations of the laissez faire market mechanism having gone out of control. Intervention by public authority thus becomes justified in order to counteract various evils. Our position, in terms of ideology, is the middle ground. Radically, our view is that the role of government in control *must* be revised but this should be done gradually but steadily.

However the ideological basis for control is a difficult and complex one. Many disturbing questions have been raised over this argument: Are those who intervene in order to control a situation - like the haphazard

land use development in Kenyan towns - really producing change and righting wrongs or emphasising the status quo? Are certain kinds of intervention wholly superfluous and irrelevant anyway in that they simply reinforce the market mechanism of a society? In order to clarify and illustrate these questions we will look further into the workings of deliberate intervention: land use and development control in Mombasa municipality in this and the next two chapters.

### 3.2.0 THE LEGAL BASIS OF DEVELOPMENT CONTROL

The legal basis of control over the physical environment is of great importance and is essential to an understanding of its practise and procedures. An understanding into the gaps, the anomalies and the superfluities in the Kenyan system of deliberate controls over the physical environment and the place of "urban planning" or "development" controls within this depends to a very great extent on understanding its basis in the statute law and in administrative regulations and action. Knowledge of the statutory administrative basis helps in understanding various relationships between the central and local governments, between departments within the central and local planning authorities, and between them and the public.

The foundation of (the) Kenya's system of development control can be traced in part III of the British Town and Country Planning Act of 1947 which established the need to seek permission for all development carried out in all municipalities and counties after July 1948. The definition of development then was qualified to exclude normal building maintenance and internal alterations, highway maintenance and minor improvements, the

maintenance of public utilities and changes of use in building or land within the same class of use to be defined by the minister later. Furthermore subsection (3) of section 22 stated that the subdivision of a single dwelling into two or more involves a "material change in use" as does the displaying of advertisement on buildings. (subsection 4).

This scope of definitions comprise physical development operations, change of use of land and buildings. Subsequent sections of part III of this Act dealt with the way in which local planning authorities should deal with applications. Of special importance is section 14 which state that the authority may grant permission, temporary or permanent with or without conditions, or refuse permission. In dealing with applications the authority 'shall have regard to the provision of the development plan so far as material thereto, and to any other material considerations.' (Section 14(1)).

Permission could be granted for development not in accordance with the general (structure) plan and the circumstances in which this could be done would be prescribed later by the ministerial order. This section is backed by Town Planning Ordinance of 1931 section 24. (section 4.3.1). Section 15 empowered the minister to 'call in' any application for his own direct consideration and section 16 established the ministers important and significant role in receiving and deciding with finality the appeals of those applicants who were aggrieved by the local planning authority's condition or because of refusal permission. Ironically, these powers were vested upon not the minister or commissioner of lands, but the minister of local government, and by delegation, the mayors as is evidenced by the operations of the Kenya's local authorities, at least as far as development control is concerned.

The logic of the ministers position with respect to 'calling in' applications and determining appeals has been contentious, being open to the charge of 'judge and jury in his own cause'. But so long as applications for permission to develop are judged in relation to a development plan which the minister has already considered and approved (with or without modifications) then he has an inescapable relationship with applications.

It is important to look at the 1947 Act in this way because although subsequent legislation (eg. Town and Country Planning Act of 1952, 1953, 1959, 1962, 1968 and 1971) have done much to revise the details of development control, its incidence, rights of appeal, etc. there has been no fundamental changes made to its statutory purpose, more so in Kenya. Thus despite the obvious close interrelationships between plans and controls, it is felt that the trouble with the planning system is not only with methods of control but also with the planning and the control legislation with which the planning authorities are operating in. It is a web woven such that its either strictly adhered to and make the whole exercise of development control boring and tedious, or ignored, as is the case in some Kenyan municipalities and make the legislation 'toothless'.

### 3.3.0 RATIONALE FOR CONTROL OF URBAN LAND USE.

The concept of regulation and control of land use implies a rule setting function on the part of the government. One view is that the market cannot be trusted to produce a rational efficient land use system. In particular it is unsuitable, as a mechanism, to accommodate all legitimate demands for space at any given time and simultaneously to allow for long-

term growth in that demand. Land is a scarce resource permitting stewardship by public bodies that can balance short-term against long-term benefits and balance the claims of one interest group against another.

The demand for urban land is growing yet the supply is both genuinely and artificially limited (UN Dept. of Economic and Social Affairs, 1985). In this context even the more capitalistic free enterprise - oriented societies have increasingly imposed some measures of public control over the use of land. Government policy has become more important everywhere although the nature and degree of intervention varies from country to country and from town to town, depending on political, economic and social traditions. It is assumed here that governments should intervene in some way to guide the allocative and distributive effects of urban land use in pursuance of public interest.

### 3.3.1 Rationale For Government Intervention.

The market mechanism is unlikely, on its own, to produce an efficient allocation of land uses. It is possible, however, to argue that left to itself, the free market could allocate land to its most desirable use and that therefore government intervention is at best unnecessary and at worst counterproductive. This is undoubtedly true given both a perfect market and an equitable distribution of income (DeGraff, 1977; Arrow & Hahn, 1981; and Varian, 1988). Moreover the ownership of land is generally unevenly distributed among members of the community so that the market is not likely to allocate the income from land in the way the 'community would wish'. Again the market mechanisms cannot take into account environmental considerations which often are expensive but which are absolutely

necessary. For these reasons all governments intervene in urban land markets although to widely differing degrees.

Such intervention in a market based economy is supported by the belief that the Government can implement these policies in a way that reduces inefficiency and makes the resultant distribution of benefits more equitable<sup>1</sup>. Yet many immediate goals may conflict with one another and governments face problems of obtaining adequate information of defining suitable techniques, and of fully implementing policies once they are introduced. As a result the benefits of intervention may be far less than expected. The costs of intervention must therefore be counted as well as the benefits before deciding how to intervene, or indeed whether to intervene at all.

### 3.3.2 Public Development

Public development, that is, development by government departments, statutory undertakers and local authorities is not entirely outside the ambit of planning control. However the gaps in the control are much broader than the areas of coverage (McLoughlin,1973). Where a local authority or a statutory undertaker must have approval from a government department to undertake proposed development, formal planning permission is not necessary. The approval of the development is treated as 'deemed planning permission'. For development outside its own territory, the local authority must make formal planning permission to the relevant local

---

<sup>1</sup> The belief that markets are so imperfect as to require intervention is not universal even within the developing countries. Bauer and Yamey(1986).for instance, hold a sceptical view and discuss the case specifically in relation to urban structure.



planning authority.

The effect of this provision is that control measures may have no influence on the location of land use activity regardless of whether it meets the basic criteria of health, convenience and safety with the eventual result of distorting the development pattern of the town and accompanying externalities.

#### 3.4.0 DECENTRALISED DECISION MAKING ON LAND USE CONTROL MEASURES.

Since 1986 the Kenyan government decentralised the administrative functions of land use and project planning and control under sessional paper No.1 Economic Management for Renewed Growth. The establishment of District Development committees (D.D.Cs) as the planning and decision making unit of all developments in the district, and by extension to the divisional level, introduced local level participation in project planning. This gave an impetus to the development control muscle of the local authority in terms of involvement of local leaders.

It is clear, as established by this study, that local leaders (chiefs, councillors and even neighbourhood elders) have first hand information on land ownership which is useful in approval of subdivisions, transfers, plot allocation and exchanges used in Divisional Land Control Boards. This is important in the control of development in parts of the towns considered as "rural" or "peripheral". The leaders have however taken advantage of their position to abuse this responsibility. Ironically despite the corruption which goes with the decision made by the local leaders, the local people prefer to have their developmental problems solved fast and cheaply by these leaders. This is because development control approvals

are channelled through cumbersome administrative procedures by the council, which to the local people is a waste of time and finances.

In Mombasa decentralisation measures have not had substantial impact especially in the control of growth of informal settlements. Positive development control measures like land reform and land information centres are necessary. The newly enacted Physical Planning Act, which was long overdue, is a step in the right direction. The Act will supplement the functions of the Mombasa town planning, works and housing committee and enhance sound planning and control procedures in the municipality. This should be followed by a possible involvement of the community in resolving matters like standard determination, demolitions, evictions of squatters and allocation of public land for private development among others.

#### **3.4.1 Public Participation and the Private Sector.**

In any urban or urbanising area, government policy, programmes and actions affect the pattern of urban development. The importance of public participation in land use planning and control, as a factor affecting this pattern, can not be over-emphasised. Lack of government and the council to recognise the necessity of community participation to decide, plan, and implement neighbourhood improvements, has had devastating results in many parts of this country.

Whereas the target communities have representatives who sit in the various council committees, these representatives do not, in most cases, alert the people about the planning, and particularly, building by-laws and other legal land use control measures affecting them. Deliberations on planning and building by-laws and codes require involvement of community

participation at all stages of decision making process. But often the position has been that the views of the local residents are not sought before embarking on some project or plan preparation.

In recent years due to shortage of suitable urban land, Kenyan local authorities, including the Mombasa municipal council, have experienced pressure from developers and interested parties to allocate land zoned for public purposes, yet others have been known to seek planning approval for incompatible uses. A case in point was the recent chemical plant saga which after prolonged deliberations had to be refused location in Mombasa. When such controversial projects are granted permission, communities have been known to protest and in extreme cases, pull down any structures erected.

As much as community participation would go along way in making planning and controlling of land use easier, to be effective it entails additional resources in training, organisation and investment in other related activities. These are two sides of the same coin which must not be overlooked if future development of our towns is to be orderly.

### 3.5.0 TRADITIONALLY-BASED ORGANISATION AND DEVELOPMENT CONTROL.

Experience in Kenya show that where the traditional based organisations are involved in urban management especially the community activities, smooth implementation and attaining objectives are feasible.

In Mombasa, the growth of unauthorised settlements, and other developments, on both government and private land is alarming. The traditionally based organisations based on ethnic, religious, trade and other considerations, have existed in Mombasa for a long time. These had

undertaken health, water, education and even housing projects successfully in the low income areas. Such organisations could be harnessed and modified to fit into the administrative structure of the legally constituted and recognised development control machinery in the local council. Mombasa for instance has had a long standing indigenous building technology capable of providing a relatively high standard of accommodation at low costs. With the introduction of the much criticised western oriented housing codes and standards, this valuable technology has been condemned as substandard with the eventual results of poor housing in Mombasa.

Other non-formal traditionally-based organisations in Mombasa which could be relied on to make development control more effective are:

- a) Women groups organised on neighbourhood, ethnic or religious basis.
- b) Land buying or housing societies and
- c) Informal 'planners', 'architects' and 'surveyors' who assist in illegal sub-divisions of land by pacing and pegging of boundaries.

### 3.6.0 CONCLUSIONS

This chapter has looked critically at the actors in the conventional physical planning and development control in Mombasa. We have also discussed a wide range of issues ranging from the ideological and legal basis of control to the rationale for intervention in land use regulations. One area which has been mentioned at length is the need to decentralise and incorporate the local communities into the statutory planning proceedings within the scope of local planning controls, either under the regular permission procedure or under some modifications which gives adequate consideration to the local concerns, inevitably involved in such

proceedings.

## CHAPTER FOUR

Development control procedures are not only subject to the legal framework of planning but also subject to traditional land-use questions. This dual system not only has distinct basis in law but should use different types of enforcement procedures and involve different types of restraint on the individual's use of private (land) property. But since the controls are entire codes and that the local authority acts as the agent for the central government in administering these controls, the possibility of integration of local concerns or preferences into these controls (codes) systems seems narrow.

It is the authors contention here that within the confines of the local development plan based on what are considered to be local problems, the planning authority should be in a freer position to look at the kinds of development control measures it believes are relevant to local problems. Land use control systems should be able to reflect the varied development of social systems and ethics. In consequence, what is appropriate and works to the best public advantage in one town or city generally cannot be transferred with similar results to another town or city, even within the same country. In other words what has been seen to be working in Nairobi may not necessarily work in Mombasa. The importance of the historical and physical context may explain why land use control measures in different parts of the country have not been matched by evaluations of their effectiveness or explanations for their success or failures.

## CHAPTER FOUR

### 4.0.0 REVIEW OF LAND USE CONTROL MECHANISMS

#### 4.1.0 INTRODUCTION

This study as mentioned in chapter one, focuses mainly on the restrictive control measures utilising government power to restrain or otherwise direct land use and development activities.

The four most common forms of restrictive land use regulation and control mechanisms are: zoning, subdivision regulations, building regulations, and approval by government agencies. The first three provide a hierarchy of regulatory techniques covering different sizes of land area and levels of detail. The first applies to the general structure of the whole town and is usually the least detailed. The second covers the immediate relationships between contiguous plots in greater detail. The third is the most detailed and controls the nature of the structure permitted on each plot sometimes including the allowable uses. These three instruments are normally used in conjunction and indeed often include elements of one another. They are, however, by no means always determined by the same group of decision makers.

Agency approval is the usual method of implementing the regulations specified under the first three controls. However, the approval procedure sometimes merits separate considerations since in many cases it is operated by one or more organisations or agencies completely unrelated to the planning bodies determining the regulations. For each forms of control, we examine its objectives, characteristics, problems associated, with them and their potentials to improve the urban structure.

#### 4.1.1 ZONING

Courteny,(1983) defined zoning as the demarcation of a town by ordinances and the establishment of regulations to govern the use of the zoned land. It also includes general rules about location, bulk, height and thus plot ratios shape use and coverage of structures within each zone. It is an attempt to organise and systematize the growth of urban areas by setting up categories, classes, or districts of land in the community, prescribing the use to which building and land may be put and applying uniform restrictions on the shape and placement of buildings. The main objective of such regulations are to improve efficiency,(which includes restricting uses to particular areas to limit adverse spillover effects), to promote agglomeration benefits, to specify minimum health and safety requirements and to provide land for public goods and services. Zoning is also used to affect the distribution of benefits especially the protection of the rights of existing owners, although it can be used more positively to release land for redistributinal proposes such as a low-income housing (Catanesse,1988).

Zoning is the control most frequently employed to regulate the use of land. In its most traditional form its purpose is to ensure a proper amount of land for all the activities that must be performed in a contemporary urban community, to fix the best location for each and to avoid the encroachment of incompatible uses. To meet these aims cities and municipalities may regulate the use of land and buildings by restricting areas to industrial, commercial, residential, institutional and others.

#### 4.1.2 Early Zoning Ordinances

Early zoning ordinances were based on a scale of intensity ranging from single family residential (least intense) to heavy industrial use (most intense). Designation of district areas for residential, commercial and industrial use for every community soon proved impractical (Siegan, 1972). Modern use zoning has therefore become a more flexible and ad hoc device (Hall and Marion, 1983). A second type of zoning ordinance is that of "bulk control" applied to both residential and commercial buildings. It has three purposes; control of population density, production and traffic; provision of adequate daylight and air; and provision of sufficient privacy and open spaces. Older zoning ordinances regulated the shape, volume and placement of buildings by height limitations, set back requirements (that buildings be set back from the street at certain distance for each additional height) and requirements for open space surrounding buildings and courtyards. They were applied to all buildings in the relevant zone. This form of control was criticised for both its rigidity and the often unnecessary cost imposed upon the builder or developer.

#### 4.1.3 Modern Zoning Ordinances

More modern control uses volume or floor area ratios based on the relationships between the floor space needed in the building and the area of the lot (Courteny, 1983). Spacing between the buildings to admit daylight is also defined. The greater flexibility allows more freedom to develop better and more interesting buildings. In recent years a more comprehensive but flexible approach to zoning has been introduced in many countries including Kenya. The new techniques emphasize comprehensive



development of large scale projects to produce critical masses of compatible and self reinforcing land uses as well as flexibility and adjustment to changing circumstances within the delineated area. The techniques include zoning for mixed use development, transit impact and cluster and planned-unit development (P.U.D)(Catanese and Synder, 1988).

Mixed-use zoning may be applied to very intense large scale estate developments made up of several well planned and mutually supporting projects. It permits significant physical and functional integration of project components and development in conformity with a coherent plan that stipulates the type and related items. P.U.D. zoning may be applied to places of land containing a residential housing cluster of prescribed density and the appropriate commercial and institutional facilities to serve the residents. Courteny(1983), argues further that, by clustering houses and consolidating open spaces substantial areas can be left in a natural state. Less land is used for streets, utility runs, and more efficient drainage is better and less grading and site preparations are required. It can therefore produce a better residential environment at lower cost and higher profit to the developer.

Even this type of zoning, however, may prove difficult to modify especially if the request is not initiated by the land owner(Hamid, 1981). So much so that, as Siegen(1972) argues, further techniques such as floating and conditional zoning could be employed to give even more flexibility to the administering government. Finally there are instruments such as interim and phased zoning to alleviate problems in the timing of development and in plan modifications. With phased zoning, a special permit is required before actual development can occur. For example land

already designated for residential use cannot be subdivided for development until the land owner obtains this permit. It is granted only if he/she can show that adequate public services such as sewers, drainage, park site water, roads etcetera are available. Thus development in the restricted area is phased to the towns willingness and ability to extend public services. This explains why Mombasa island has continued to receive a greater proportion of government and municipal services as opposed to the (poorly served) mainland areas.

#### 4.1.4 Problems Associated With Zoning

In practise, as has been demonstrated by Siegan(1972) and Jacobs(1971), zoning often encounter two distinct types of difficulties; incorrect definition of the framework by which social objectives are to be met, and; costly and limited implementability often leading to results different from those planned—typical of development structure of the study area. In relation to the first, traditional zoning regulations are oriented to the development of one lot at a time within a general framework and to traditional blocks intersected by the usual gridiron pattern of streets. They make little sense when rigidly applied to large scale projects. The newer form of regulations give more latitude to the builders in their design and have produced greater returns to the developer, as well as to the community from cost savings and agglomeration benefits(Courteny, 1983). With respect to the second, to be of value zoning must be a legal instrument. As such it is a potentially strong and powerful tool in preventing blight, eliminating conflicting land uses and ensuring the orderly implementation of development.

#### 4.1.5 Zoning as a Legal Instrument

As a legal instruments, however, zoning is difficult to modify and acts mainly as a restrictive force in relation to a static framework rather than as a positive incentive and guideline to development(Siegan, 1972). Land and building costs may be increased by zoning restrictions on the uses to which land may be put or on the nature of the improvements required. To some extent this is necessary to bring development into line with social objectives, but standards and controls often prove inappropriate, increasing costs unnecessarily. Zoning may have undesirable distributional effect—for instance in the case of overzoning (the designation of excessive amount of land for a particular category of uses) to protect existing owners land values, or when zoning is used to exclude certain minorities from particular neighbourhoods. If its implementation is sporadic and piecemeal it further upsets the workings of the land market and may intensify the maldistribution of "surplus value"(Siegan, 1972).

Evidence emerging from these studies tend to suggest that zoning will function best when it is one of several tools employed in the planning process. It cannot effectively outlaw existing uses, is resisted by owners and often limits desirable changes in land use. It may, if improperly specified, retard valuable investment or force builders to find less suitable sites where restrictions are less onerous. In Kenya, like in many other developing countries, where the supply of urbanised land is increasing more slowly than the growth of urban population, it has resulted in illegal developments, incompatible land uses and hence environmental problems.

#### 4.2.0 SUBDIVISION REGULATIONS

Subdivision regulations govern the development of land for residential or other purposes. They prescribe standards for lot sizes and layout, street improvements, procedures for dedicating private land to public purposes and other requirements in far more detail than in the zoning plan. They also include procedures for filing maps and for receiving the approval of the public departments that grant permission (Courteny, 1983).

In the main, the objective of such detailed control is to ensure that developments take account of the community's needs for public goods and services of minimum standard requirements and of immediate locational spillover of costs and benefits. The subdivision of land prior to development is one of the most important determinants of neighbourhood patterns. Once the size and shape of lots have been defined, the essential character of land uses, street patterns and public utilities is determined. Lot size and shape also strongly affect type, size and quality of structures and the density of population (UN-DESA, 1975).

#### 4.2.1 Degree of Intervention

The nature of intervention varies greatly from country to country. In Kenya, for example, there is very little formal control outside the town limits and often little actually within the towns. Development may take place without services or any attempt to organise an efficient spatial structure. This is the case of Kisauni and Kongowea neighbourhoods of Mombasa. In other cases developers are required to conform to a regulatory framework and possibly a detailed structure plan.

In Mombasa the municipality ideally exercise considerable control over developers by requiring conditions to be met before they can provide streets, lighting, water and other services. In practice, however these requirements are flouted and services like water and electricity are provided without fulfilling the laid down conditions. The regulations and planning of subdivision on the outskirts of towns and cities are widely accepted as essential to development. Proper and timely planning of expansion can preserve the sound structure of towns in the long term.

An important element is the dedication of land for public purposes. In Israel, for instance, planning authorities may take as much as 40 to 50 percent of private developers land for open spaces and other public uses. In Mexico this comprise 15 percent while in Bogota, Colombia, it is 35 percent (Courteny, 1983). In Kenya this accounts for about 15%. The subdivision regulations must conform with the requirements of the structure plan or advisory development plan for a specified part of the town (Town Planning Act 1971).

#### **4.2.2 Flaws in Kenyan Towns: The Mombasa Experience**

One major problem in Kenyan towns is that although control policies exists over land within municipal boundaries, there is little or no control over existing land or new developments. As regards subdivision, for instance, this study found out that about 60% of the respondents had their land or plots subdivided irregularly and so was their development. Without additional regulations suitable for these areas, unsanitary substandard buildings or unplanned narrow streets evolve similar to those in the study area. The built up areas in the study area lack essential community

facilities. Their development has thus created health, aesthetic, financial and administrative problems of substantial magnitude for the municipal council.

**Table 4.2.2(a) Land Subdivision**

	No. of Plots	%age of Total
Subdivided	18	30%
Not subdivided	42	70%
<b>Total</b>	<b>60</b>	<b>100%</b>

Source: Field survey, 1997

**Table 4.2.2(b) Subdivision Procedure**

	No. of Plots	Percentage
Illegal Procedures	11	60%
Legal Procedures	7	40%
<b>Total</b>	<b>18</b>	<b>100%</b>

Source: Field survey, 1997

Lack of essential community facilities was the most serious problem identified by the majority (83%) of respondents.

**Table 4.2.2(c) Major Problems Perceived**

	No. of People	Percentage
Poor Services	50	83.3%
Landlessness	7	11.7%
Congestion	1	1.7%
No problem	2	2.3%
<b>Total</b>	<b>60</b>	<b>100%</b>

Source: Field survey, 1997

Table 4.2.2(d) Missing Services/Facilities

	No. of plots	Percentage
All Services Missing <sup>1</sup>	28	47%
Water only missing	3	13%
All except Electricity	23	38%
All except Water	1	2%
Total	60	100

<sup>1</sup> all= water, electricity, drainage, sewer, phone, access road, waste disposal facility

Source: Field survey, 1997

Due to rapid population growth in Mombasa, coupled with shortages of public utilities, these problems are likely to continue, not because control legislation does not exist, but because they cannot readily be implemented.

#### 4.2.3 Subdivision Regulations: A Powerful Tool in Development

In the main subdivision regulations can be effectively applied only to areas being urbanised for the first time and even then there are difficulties of enforcement. One major problem is that most subdivision regulations in developing countries have been based on experience in the developed countries such as Britain, America, France among others. Subdivision regulation has proved a powerful tool in assisting and controlling suburbanisation in the developed countries where public control over detailed plans has existed for many years. But the needs and conditions of developing countries require a significantly different sets of standards; more flexible, more able to take account of rapid changes, more clearly related to local conditions and standards of living and more easily

implemented.

It has been argued many times over that current standards are often too high, too detailed and inflexible, unrelated to local conditions and often even to planning objectives of the community (Agevi, 1993; Syagga, 1992). Moreover, the control of subdivision is usually in local political hands and may well be manipulated to protect the vested interest of the few rather than to foster the interest of the many.

#### 4.3.0 BUILDING REGULATIONS

Building regulations limit or define the way new structures are to be built and the materials to be used. They may also be applied to the maintenance and improvement of existing buildings. They may prohibit the erection of any structure whatever or restrict the style of architecture, the cost of the structure, the materials, the position of the building on the lot, or its distance from the street, its height or depth (Wexler and Peck, 1985). More recently building regulations have included requirements for parks, parking and other amenities as a condition for approval of a subdivision or street pattern. They may also include control over the use to which the building may be put— for example for residential purposes only or for specified type of enterprise as well as minimum conditions which dwellings must meet to be regarded as fit for human habitation (Courteny, 1983). They may be in the form of building and housing codes legislated at the national level or they may be written into deeds or other instruments as part of the contractual arrangement (Wheaton, Milgram and Meyerson, 1986).

Their main objective is that of securing socially acceptable minimum



standards. Originally there were three main reasons for such regulations: fire protection, structural safety, and sanitation. Today these codes include not only far wider range of protection but often aesthetic considerations as well. In addition they are seen as an important device for preventing the deterioration of the housing stock. Building regulations are one of the oldest and most common methods of controlling land, and particularly, building development.

#### 4.3.1 Categories of Building Codes

The building codes, in essence, should be defined for a specific local, regional or national area depending on the size of the country, the political structure, the variations in climate, the local materials used, local standards and other factors. In the U.S., for instance, they are made by cities while in Japan they operate at national level. There are two categories of building code; the general and detailed codes. Detailed codes have little flexibility of choice and tend to lead to standardised design. Unfortunately, due to historical and social reasons, the Kenyan government adopted and put into use the detailed codes which have so far proved ineffective in guiding housing development. Another shortcoming was that this code was to apply uniformly in all parts of the country in disregard to physical, cultural and social differences.

More general specifications state the results to be achieved and a standard of performance for each structural member. This broadens the area for originality in design although it also allows a great deal of discretion to the supervising official. However, they are more adaptive to local conditions and easy to enforce. Because of technological advance,

regulations now often also specify the strength of materials and of structural parts, as well as standards for plumbing, electricity, elevators, heating and ventilation. Commercial, industrial and public buildings as well as residential buildings are all generally subject to codes.

#### 4.3.2 Limitations of Building Codes

Although building regulations are essential particularly in areas where private buildings dominates like in the study area, their limitations should be understood if they are to be useful. Current problems include over rigidity of design, manipulation by vested interests, 'forced' use of certain materials and a tendency for codes to run behind technology. The preparation of a good code requires not only local experience, but also constant experimentation and testing. As is the case now Kenya adopted a code used in Britain which is abused, ignored, and has eventually proved useless, due to its unsuitability.

Similarly, the uniform application of regulations in all sections of Kenya, irrespective of climate and cultural differences, has lead to inappropriate development or disregard of the regulations. This problem is exacerbated by inefficient controls, such as those that exclude the use of cheap local building materials or of unskilled labour.

Because of rising building costs there is need, therefore, for policy makers to either lower standards by reducing lot sizes and eliminating amenities often below a tolerable minimum, or to accept that standards will not be met. Structures in most of our towns, for instance, fall below the standards formally established in these areas. Even the government involvement, particularly with respect to site and service schemes and

upgrading, has shown very serious disparities between building standards and the building conditions and about the extent to which the disparity between the two can in some way be reconciled.

#### **4.3.3 Abuse of Codes**

This disparity also raises important problems of implementability. In the administration of building regulations, the abuse of authority by inspectors, encourages illegal constructions and bribery. In Kenya, like in many other countries, buildings are supposed to be inspected before occupancy, under the Public Health Act 1972 ( revised 1986), but because of inadequacies in the inspection process, a large number are incorrectly certified as meeting standards. Admittedly, there is no easy solution to this problem in countries where corrupt administrative practices are common throughout the public service system. Studies show that even where there is considerable incentive to operate the codes, they are likely to prove unenforceable, at least in part, so long as standards are set significantly higher than those consumers can afford.

#### **4.3.4 Increasing Capacity of Codes**

In such circumstances, as when codes fail to be implemented, even with incentives, the capacity to implement regulations may be increased by reducing general standards while maintaining minimum standards for health and safety, perhaps with the assistance of a subsidy. Site and service schemes were designed in this way in Kenya. They pointed the way to a more positive definition of building regulations as a series of performance standards rather than as inflexible input requirements and constraints.

Clear statement of what will satisfy each regulation allow producers to take local physical conditions into account. In determining output standards of this type, what consumers can afford to pay, including what government or international agencies are prepared to subsidise, must be kept in mind. Initially, they should be designed to deal only with the most immediate social needs, but over time as standards of living rise, they can be adjusted upwards to take account of other factors.

#### **4.4.0 APPROVAL BY GOVERNMENT AGENCIES**

Approval by government agencies is the main way in which controls over development rights, subdivision and building regulations are enforced. Generally building permits are required to enhance compliance with the local by-laws and in some cases with the general town plan. Traditionally a building permit was usually granted tentatively on the basis of schematic designs of the proposed building or group of buildings prepared in line with zoning, subdivision and building regulations (Courteny, 1983). The designs were then finally approved when the full set of contract documents was available. These documents were stamped, filed and recorded so that the development was designated as conforming to requirements.

#### **4.4.1 Power to Deny Permission**

Government agencies have the power to deny permission to build and this is perhaps their most important control although refusal to issue a permanent permit may sometimes be challenged if it is thought to be unreasonable (Keeble, 1961). The Kenyan government planning and development control legislation empower building inspectors and

development controllers to deny permission for development which is incompatible with land use regulations. Regrettably, more often than not this power is exercised sporadically, where it is used it may have other purpose than to bring about compliance with regulations. For instance some countries use the denial technique to prevent urban sprawl. The power also extends to the right to demolish buildings which do not comply with the regulations or to fine owners of non-conforming units. The most usual of this power is in relation to the demolition of unauthorised settlements, but it may also be applied to buildings within the formal sector, whether residential, commercial or industrial.

#### 4.4.2 Clear Definition of Responsibilities

One major difficulty, in enforcing regulations, is the proliferation of agencies involved in any particular development and the lack of coordination between those that enforce the ordinances and those that operate them. To effectively overcome these hurdles, it requires clear definition of duty and coordination of the enforcing and operating agencies and a sound knowledge of local government regulations, procedures, and building and zoning codes on the part of a team of architects, planners, lawyers, and political expeditors. Otherwise this tedious process may not necessarily ensure that better buildings are produced. It only adds substantial costs in professional expertise, and in the time and resources necessary to complete the project.

Developing countries can not afford the luxury of such a process of checks and balances in their building procedures. This therefore, calls for a more simplified procedure in designing and enforcing regulations.

#### 4.5.0 LAND TENURE SYSTEMS

Land tenure is a basic instrument of overall development policy, performing both an indirect, facilitating role and a direct and active one. It interacts strongly with other elements of the urban economy, being closely linked to the mortgage market, which takes a substantial proportion of borrowed funds in most countries; it is a major determinant of the local tax base and significantly affects the quality and return of investment undertaken in land and structure. The urban land tenure systems must therefore be viewed within the setting of more general policies concerning land utilisation itself. Land being both a public and private good has dual characteristics; As a public good land is permanent - it can not be destroyed or created and hence no generation can consume it, each has a moral duty to use it sustainably (with a view of those who follow); its value, particularly in towns is created to a considerable degree by the social phenomenon of urbanisation and other forms of control such as zoning.

On the other hand it has a private nature in that there are deep psychological needs for the security that has traditionally been associated with ownership of land and house, and that: reasonable security of ownership (or even possession) has been able to evoke capital investments in housing which notably could not be mobilised by any other institutional device.

#### 4.5.1 Tenure in Relation to Land Use Control

What happens to a given piece of land (urban) is a product of three basic forces; the market; land use controls; and form of tenure. Of

relevance here is that although the market can be highly flexible, it is subject to important limitations which may tend to make it inefficient - such as difficulty in converting the existing building in response to new market pressure; imperfections in information, dependency of individual decisions on unpredictable externalities such as transportation and infrastructure and the actions of adjoining land owners.

Land use controls may try to solve these problems but lack of information and slow adjustment still present difficulties. Moreover, many scholars argue, the controls themselves tend to be inflexible, are often negative, pose serious enforcement problems and are hard to individualise to specific sites.

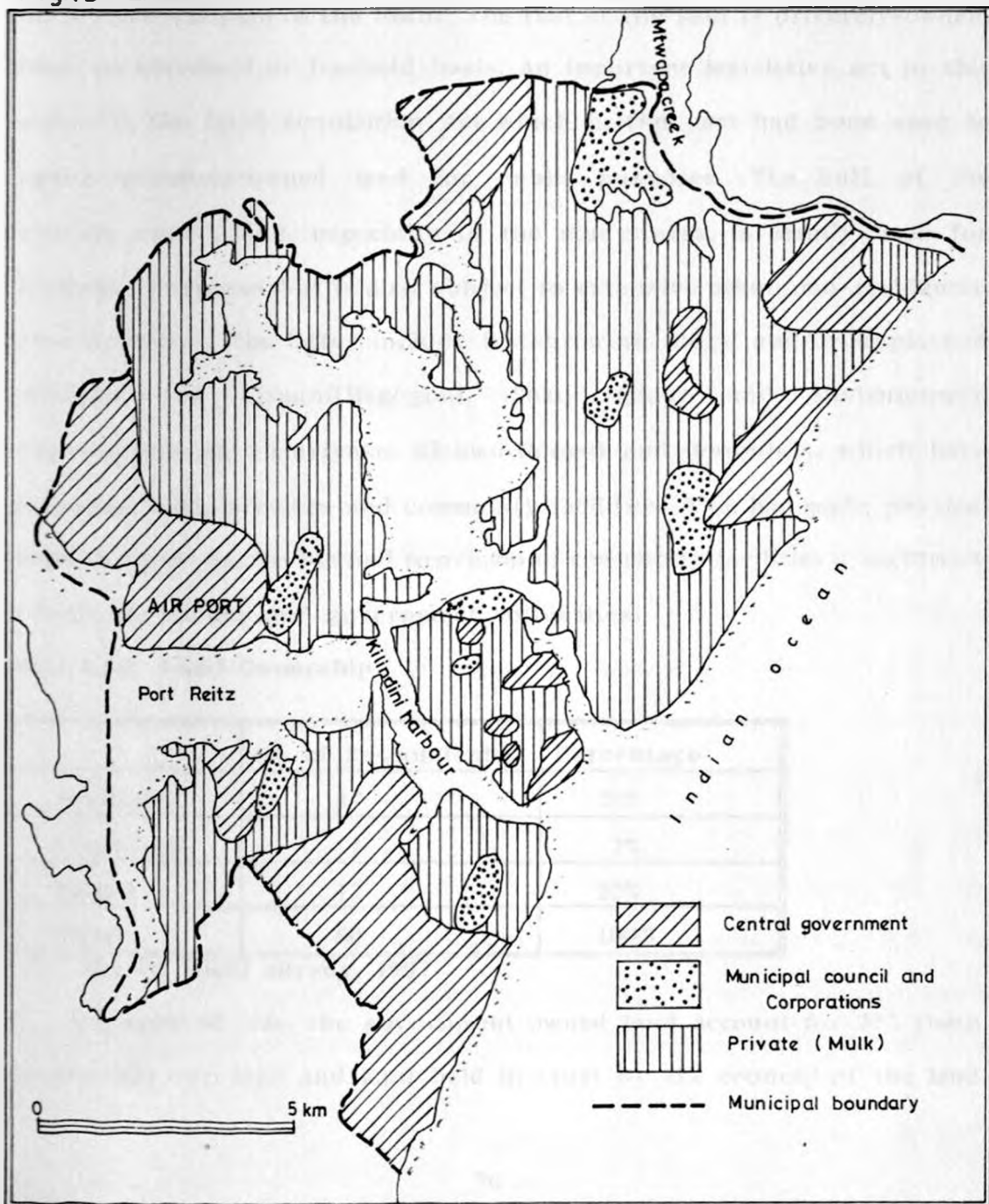
#### 4.5.2. Forms of Land Tenure Systems in Mombasa Municipality

Land in Mombasa municipality falls into four main categories, namely:

- a) Government owned land
- b) Council owned land
- c) Freehold/leasehold
- d) Corporations(Kenya Railways, Kenya Ports Authority etc.)land.

Fig 15 shows the existing land tenure system in Mombasa municipality. The use, control and management of land in each tenure varies. The commissioner of lands administers all government land on behalf of the government. This entails invoking various legislation, including, but not limited to Government Lands Act, Land Control Act, Land Planning Act(repealed), Registered Land Act, Registration of Titles Act, Land Acquisition Act, Town Planning Act(repealed), Local Government Act, and others. The council-owned land is used and controlled using the local

Fig.15 LAND OWNERSHIP PATTERN IN MOMBASA MUNICIPALITY





government Act, in addition to all other Acts used in administering the government land. In fact council owned land is government land held in trust. The land owned by Kenya Railways corporation, Kenya Ports Authority, Posts and Telecommunications and others is normally used to meet functions of the corporations but subject to the laws of the country and the general plan of the town. The rest of the land is privately-owned, either on leasehold or freehold basis. An important legislative act in this respect is the Land Acquisition Act which in the past had been used to acquire privately-owned land for public purposes. The bulk of the privately owned land, especially in the study area, is mainly used for residential purposes but is also subject to extensive other non-residential urban activities. The latter include fast-growing illegal and/or unplanned settlements at Kisauni(Magogoni, Soko Mjinga and Mishomoroni), Kongowea(Maweni, Shauriyako, Kisumu Ndogo) and Bombolulu, which have inadequate basic services and community facilities. This has made physical planning almost impossible and provision of community facilities a nightmare to both the council and government authorities.

**Table 4.5.2 Land Ownership**

	No. of Respondents	Percentage
Freehold	47	78%
Leasehold	1	2%
Rental	12	20%
<b>Total</b>	<b>60</b>	<b>100%</b>

**Source: Field survey, 1997**

In terms of size, the government owned land account for 35% (both governments own land and land held in trust by the council) of the land

in the municipality, while the corporations own 10%. Leasehold and Freehold lands account for slightly over 55% of the total land. While corporations in Mombasa own chunks of land, whatever use is put into it must be approved by the local planning authority and conform to the general plan of the town. The study found out that the current haphazard developments taking place are also due to the fact that land owners, especially in free hold and leasehold lands, feel that they own the land and can utilize and dispose of it in any manner. Private land ownership in Mombasa present a problem to orderly urban development and is further aggravated by the absence of advisory plan(s) (physical land use plan) for most residential areas.

At the time of the field survey the Physical Planning Department had not prepared advisory physical development plans for any of the low income residential estates save for Chani and Changanwe. Lack of advisory plans has resulted in the proliferation of squatter and other unauthorised settlements in Mombasa and its environs.

#### **4.6.0 DEVELOPMENT CONTROL LEGISLATION**

This section will concentrate on existing planning and development control legislation and its applicability to Mombasa. Some of these legislations have so far been repealed but they were expected to have played an important role in development structure of the town. We would like to examine the enforcement of the law in our study case and the question we are intending to address are: Does it merely exist on paper? If so who is responsible for its execution? And where has it succeeded or failed in guiding land utilization?

Planning and control restricts the owner or occupier of land from using the land in any manner he may wish. In effect development control legislation is directly derived from the Law of Nuisance whose principal idea is that..."use yours so as not to injure others." We require plan(s) because development must be co-ordinated and this can only be affected by appropriate legislation. Although land use control is exercised in accordance with a plan or scheme, this does not mean that where no plan exists there is no control. There exists legislation and the presence of unplanned development is an indicator that the legislation available is rigidly enforced. We now examine the statutes concerned with urban land development, control, management, and administration.

#### 4.6.1 The Town Planning Ordinance 1931

This Act contains provisions for use, control and development of government land. In this ordinance there are particularly two sections that are relevant to this study, section 23 and 24 of the Act and in particular section 24. Section 24 of the Act confers powers to the commissioner of lands to control development and subdivision of land in municipalities and townships. The Act states in part..."No land within any municipality or township shall be divided into lots except in accordance with the provisions of a town planning scheme approved under this ordinance." If no approved plan exists, then the Act require that the subdivision should be in accordance with another plan approved by the commissioner of lands.

This section is particularly important because it covers all the land within a municipality regardless of the land tenure system. In Mombasa the provision of this section would have been effected to control land use in

the study area in accordance with the 1931 Mombasa Town and Mkomani Planning Scheme, despite the fact that a large proportion of the land is freely held. The sporadic developments that have taken place there is an indication that the law has not been effectively enforced.

#### 4.6.2 Land Planning Act 1968

This Act has so far been repealed. But provisions of this Act dealt mainly with preparation of development plans, appointment of planning authorities and the control of development. According to this Act, the local authority could assume control over areas for which development plans had been prepared and gazetted by the minister. It therefore follows that its application is of minimal value in the study area as large parts of it, save for a small portion at Kongowea, has not been planned. However, large parts had been planned either under the Mombasa Town and Mkomani Planning scheme or under the *village layout* schemes. The existence of such plans, therefore, justified the application of the law in the area regardless of whether they had been gazetted or not.

A preparatory authority prepares the plans. In practise this was the physical planning department of the ministry of lands and settlement. The planning department of the council only prepares part-development plans (P.D.Ps) for the council owned land, which must be "approved" by the physical planning department of the ministry, at the local level.

In authority the Central Planning Authority, under the Act- the physical planning department of the ministry of lands and settlement - should have prepared plans and exercised control over all areas in the country according to the land planning act 1968. It will be noted, however,

that till recently when this Act was repealed, few urban plans had been approved under this Act. The procedure under section 24 of this Act would have been more effective. Unfortunately, for reasons mentioned elsewhere in this study, the provision of this Act were not strictly followed. It remains to be seen how effective the Physical Planning Act will be in this regard.

#### 4.6.3 Local Authority Act and Powers of Control

The provision of the Town Planning Ordinance and Land Planning Act 1968 and now the Physical Planning Act 1996, have examined land use control in broad national outlook. It has been pointed out that the Land Planning Act 1968 made a provision for local authorities to become planning authorities but, this was never affected, largely due to shortages of finance, skilled manpower and the central governments desire to centralise the planning process.

Local authorities also have powers for the control of land use in their areas of jurisdiction. These powers are derived from the Local Government Regulations of 1963. Local authorities are empowered to make by-laws within their areas of jurisdiction which will be as binding as law provided the laid down procedure is followed and the by-laws are consistent with the written laws. The by-laws could be made to effect any activity in the area be it in planning or any other matters as empowered by Regulation 201.

The most important regulation that has direct application on land use control is Regulation 166 that states: "every municipal council or county council may, subject to any other written law relating thereto, prohibit and

control the development and use of land and buildings in the interest of proper and orderly development of its area." This is the cornerstone of official land use control by municipalities and even includes private land. This provision has not been strictly affected in the case of Mombasa because the authorities say that they have 'no basis' on which to stop certain developments due to the absence of an advisory development plan(s).

Although there is no law that makes it obligatory for consultations between the commissioner of lands, the local authorities and the P.P.D., it is important that efficient land use control requires frequent consultations, which is seriously lacking in Mombasa. Ideally the council should use the approved physical development plan as a guide for granting permission for development projects. The physical planning department and the municipal council should be consulted by the commissioner of lands before approval is accorded for development or extensions of leases on government-owned land. This is however academic as most illegal developments in the study area are approved by the minister of Local Government through the mayor when developers lodge complaints directly to the ministers office.

Subdivisions (those that are ever brought to the council) are approved by the council authorities, with the P.P.D. hardly being brought into the picture. The local government Act empowers the municipal council to pull down all unplanned and therefore unauthorised structures in the municipality upon giving the necessary notice to owners. But such demolitions as witnessed in the capital city of Nairobi has not been undertaken in Mombasa municipality.

Notably, the shortage of basic resources for urban development and

planning services has severely hindered effective development control in Mombasa. As explained elsewhere, the poor financial base, inadequate manpower and others has resulted in inadequate basic urban planning data, outdated aerial surveys and other data necessary for updating existing physical development plan.

#### 4.6.4 The Physical Planning Act 1996

In this Act are consolidated both the Land Planning Act 1968, and the Town Planning Act 1971. This Act contains provisions for development and control of both government and private land. In this Act again there are particularly two parts that are relevant to this study, Part v and vi of the Act. Part v, section 29 of the Act, for example, confers powers to the local authorities to control development and subdivision of land in municipalities. Section 30 states in part... 'no person shall carry out development within the area of a local authority without a development permission granted by the Local Authority under section 33 of this Act.'

Subject to the provisions of this Act, each local authority has the power to prohibit or control the use and development of land and buildings in the interest of proper and orderly development of its area, and to control or prohibit the subdivision of land or existing plots into 'smaller' areas. Local authorities have powers, subject to this Act, to ensure the proper execution and implementation of approved physical development plans and to reserve and maintain all the land planned for open spaces, parks, urban forests, and green belts in accordance with the approved physical development plan (sec. 29(a-f)).

Further in section 41(1) the Act states that... 'no private land within

the area of authority of a local authority may be subdivided except in accordance with the requirements of a local physical development plan approved in relation to that area under this Act and upon application made in the form prescribed in the Fourth schedule to the local authority. Section 42(2) continues to state that the subdivision and land use plans in relation to any private land shall be prepared by a registered physical planner and such plans shall be subject to the approval of the director. The provisions of this Act are relevant and hence it is hoped that they will be enforced given the legal powers which the physical planners have been given under both the Registration and the Planning Acts.

#### 4.6.5 The Land Control Act

We shall examine this Act with a view of establishing whether the lack of its application has contributed to the current ineffective control of development or not. We appreciate the fact that freehold land can be alienated as freely as the owner wishes, but it was also recognised that if land alienation can be left solely to the discretion of the owners, certain problems are bound to arise which may cause socio-economic hardships to some members of community and hence the enactment of the land control Act 1968, cap. 302. The Act sets out to safeguard, among others, developments and sale of land which may render some people destitute. It is this safeguard that has direct relevance to the study area.

Subdivision, land disposal and developments should be subject to scrutiny for the purpose of making sure that an individual or individuals are not going to deprive others the enjoyment of the land. In contrast transfers and sale of land in Mombasa is done on a willing buyer-willing



seller basis, among the Arab Land owners. The pattern of transfer in the privately owned land and even in leasehold land has had considerable impact on the efficient control of development in Mombasa. The new buyers further subdivide the pieces of land into even smaller plots (of 0.008 of an acre, as the minimum plot size to a maximum of 0.8 an acre) after which they start construction.

The application of this Act is important, for any transactions in land, without the consent of the Land Control Board of the municipality, are void. Approval of land subdivision, sale and developments in the study area is no longer subject to rigorous scrutiny by the Land Control Board and the development control section of the P.P.D., which has resulted in unwarranted housing development and unprecedented rate of speculation.

#### 4.7.0 COMPULSORY ACQUISITION

Direct land acquisition by the government is often the only firm guarantee that land will be available for public purposes. In most towns, areas that can be shown to be blighted may be acquired by renewal or development agencies after plans have been passed by the local authority. What constitutes blight is to be sure, a matter of contention, but the following conditions are among those which have been held to justify the public acquisition of land: substandard housing that is largely beyond repair, vacant or dilapidated structures, congested streets, poor infrastructure, an inefficient pattern of land subdivision, and a lack of community facilities and amenities (Catanese, 1983). Looked against this background, compulsory acquisition becomes 'justified' in the study area.

However, at the time of the survey we tested peoples attitude

towards acquisition. All those who depended on the land for 'livelihood' said that they were not willing to have their land acquired but in the event of land being acquired, they would then rather be given an alternative settlement together with adequate compensation. But whether people agreed or disagree, when the minister is satisfied that land is needed for a public purpose, as per section 6 of the Land Acquisition Act chapter 295, acquisition will have to take place.

**Table 4.7.0 Respondents Views on Compulsory Acquisition**

	No. of Plots	Percentage
OK.if adequately compensated	12	32%
Outright NO	48	68%
<b>Total</b>	<b>60</b>	<b>100%</b>

**Source: Field survey, 1997**

Although the law is supreme and once executed in accordance with the laid down provisions, there is nothing that an individual can do. It has been revealed that acquisition is unpopular in the study area and should be handled carefully, considering the socio-economic hardships that may result and the consequent political implications.

#### **4.8.0 DEVELOPMENT CONTROL LEGISLATION: CONTRADICTIONS AND CONFUSIONS**

What is emerging from the analysis of the development control legislation in Kenya is contradictions and overlaps in their application. These contradictions and overlaps has made it difficult for the law to solve development problems of Kenyan towns.

This can be explained in part by the context in which planning

legislation came into existence in Kenya. Two contexts explain this: namely the historical and social. Historically, colonialism is the single most efficient explanation for the context in which planning legislation came to be possessed in Kenya. But the (Law) legislation that was introduced was "borrowed" from Britain-usually in flagrant disregard of such considerations as relevance and appropriateness. The practise of borrowing British legislation is a bizarre tradition that has survived colonialism.

The social context within which control legislation, and the entire urban planning legislation has been introduced in Kenya, traces to the need to respond to the challenges of urbanization in general, and specific problems generated by urban development in particular. The interactions between the two contexts had ensured that the actual laws in force do not necessarily and completely deal with the problems they were intended to solve.

Three things characterize the control legislation in Kenya: The first is that control legislation in Kenya is primarily an institutional framework providing a procedure for decision-making and a hierarchy of relationships created for the purpose of resolving issues arising from planning matters. The point to stress here being that the main planning procedure/process is restricted to a framework of how proper decisions are to be made and not whether they are actually enforced.

The second characteristic is that the legislation has been introduced piece-meal over a long period of time, during which there have been significant changes in planning policy and emphasis. The result is that the relationship between the two significant development control statutes-Town Planning Act and Land Planning Act-is conflicting and confusing, at any

rate unclear. When the Town Planning Act was introduced, it was intended to be the sole legislation regulating the procedure of urban planning and development control. But in 1961 Development and use of Land (planning) Regulations were introduced, which represented an expanded legislative base capable of providing procedure for planning and control of development. It is these regulations which in 1968 were re-enacted as Land Planning Act.

The Land Planning Act (1968) was intended to supersede the Town Planning Act once it became operational. But the Town Planning Act was never repealed, until recently when it was repealed by the Physical Planning Act, 1996. Nor could the Town Planning Act be replaced on the basis of the Land Planning Act provisions. The Town Planning Act being more comprehensive, continued to operate in parallel to the Land Planning Act. Unfortunately the Town Planning Act was full of contradictions within itself that it was applied arbitrarily. It was misinterpreted and misapplied, making development control impossible. For instance, while sec. 8 of the Town Planning Act provided for public participation in planning, sec. 52 of the same Act provided for 'secret' planning-what McAuslan (1980) and Garner (1981) call conciential planning. Under this provision, private developers could enter into private/secret agreement with local planning authorities and some conditions attached to the approved plan. This provision was misunderstood and misinterpreted, the end result of which was the proliferation of otherwise 'illegal' developments in Kenyan towns.

The third characteristic is that the system was basically discretionary. This posed a procedural question related to choice: was there discretion whether to use the Town Planning Act or the Land

Planning Act for purposes of planning and regulation of development? This confusion and conflicts resulted to invoking provisions from both the Acts when it suited most. The creation of planning units, the approval of plans and institution of the planning processes were all left discretionary, to be operationalised when policy-makers saw the need for it.

Responsibility for approving plans rested with the minister who was responsible for town planning and thus the chief controlling institution in urban planning. Enforcement of compliance was a responsibility shared amongst a vertical structure of institutions starting at the bottom with the Local authority, and ending up at the top with the minister. The structure was unclear under the provisions of Land Planning Act than under the Town Planning Act. Under the relevant provisions of the Land Planning Act, control was exercised at the lowest level by "planning authorities" - the Local authorities. This ambiguity still prevails in the current Physical Planning Act of 1996.

The relationship between planning authorities, controlling institutions and executive authorities was thus, and is still, unclear and complex. In most cases there were overlaps, so that the same institution which was designated as planning authority also exercised controlling functions or executive functions. In other cases there was no clear hierarchy or division of responsibility and authority giving rise to short-circuit procedure. This confusion and contradictions created a condition(s) whereby policies could not be adequately articulated and enforced, local authorities could not understand and internalise the basic principles of policy and a condition where due to the above, policy could not be effectively related and reflected in plans. The lack of clear definition of

duties between planning and control institutions which still persists in the present Act raises doubts whether it will solve the endemic planning problems in our towns today and in future.

#### 4.9.0 CONCLUSIONS

There is a wide range of experience, both good and bad, with land use controls as evidenced by this and other studies in Kenya. The controls discussed in this study are largely restrictive but they have not been designed and tailored for the urban conditions in developing countries such as the inadequate skilled administrative personnel, peculiar climatic, socio-cultural and economic conditions and others. (Yahya,1985; Agevi,1990; Shihembesa,1990).

This may be an important reason for the greater success of more direct incentive measures in developing countries. In particular their effectiveness may be attributed to their high-visibility and the ease with which they can be linked to current project-orientated approaches. On balance past experience may indicate that little attention has yet been paid to identifying goals and simplifying administrative procedures when designing regulation. The lessons of the past and the present should therefore be used to improve existing control legislation and procedures.

Moreover changes occurring in the socio-political context are likely to increase the opposition of such controls (UN Dept. of Economic and Social Affairs, 1991 & 1995). Further the 1990 UN conference on Human Settlement (Habitat) noted that effective land use planning and control measures cannot be implemented unless the public and all levels of government have access to adequate information. It was consequently recommended that

comprehensive information on land capability, characteristics, tenure, use and legislation should be collected and constantly updated so that all citizens and the government can be guided as to the most beneficial land use, allocation and control measures (Okpala, 1992). This means that the Kenyan government might have to consider reviewing its direct involvement into urban land development and particularly housing operations.

Given a political commitment to change a number of basic improvements should be made to render land use controls more effective. First where existing land use controls are unworkable - hampered by obsolescence, inconsistencies, poor informance, and lack of skilled man power-immediate improvements may be possible such as updating local ordinances and increasing the supply and skills of available manpower to administer the control system. Secondly, more efficient controls such as the newer zoning techniques, particularly if operated in conjunction with a strategic development plan linked to specified goals, can help ensure development meets the desired social objectives of efficiency and equity.

In Kenya a national level reform of some of the land use control and related policies has been initiated. The government initiated the revision of the unrealistic building and planning standards and in July 1995 gazetted Grade II by-laws for adoption by all local authorities (Kenya gazette, July 1995). The objective was to lower the building standards without foregoing the safety, health and environmental factors. In addition appropriate planning policies on car parking, open spaces, surrenders, building lines and road reserves are being pursued. To obtain the full benefits of these initiatives, a national level reform of a whole range of land use control and related policies has to be initiated.

- Already the city council of Nairobi has further reviewed densities. The previous densities of 500 persons per hectare in special scheduled areas (high density housing areas) have risen with the implementation of the Sectional Properties Act, permitted division of buildings (residential/offices) into units to be owned by individual proprietors. The planning and management of land use policies need to be reviewed along with capacity to provide public facilities, additional infrastructural services and creation of enabling environment in order to reduce urban sprawl. In addition it is necessary to examine the extent and form of regulations, their strengths and weaknesses, the agencies responsible, the extent of overlap and conflict of regulatory policies and authority.
- On the main land use regulations in Kenya have failed to achieve greater efficiency in the utilisation of urban land for many reasons, some of which include:
- 1: Their static nature puts the public sector in a position of reaction and constraint rather than initiation and promotion.
  - 2: The inflexibility of controls makes orderly adjustments to rapid changes extremely difficult.
  - 3: The traditional approaches to regulation and development of land are inadequately taken into account in drafting and administration of regulatory measures.
  - 4: Implementation of the regulations is costly in terms of both time and money used for administration.
  - 5: The higher value of favourable decisions by land owners and users generates a climate of corruption.



To overcome the above shortcomings any reform on the land use regulations and policies must be designed to meet, as a minimum, the following criteria:

- 1: They must permit the kind of development that is desired by the target group at costs they can afford.
- 2: Their enforcement must be feasible at the level of administrative capability that can be reasonably expected and that
- 3: They should be designed to minimise the potential for arbitrary manipulation.
- 4: They should be so as to preserve property values while leading to highest returns to the developer and municipality.
- 5: They should be so as to improve the living environment of all.

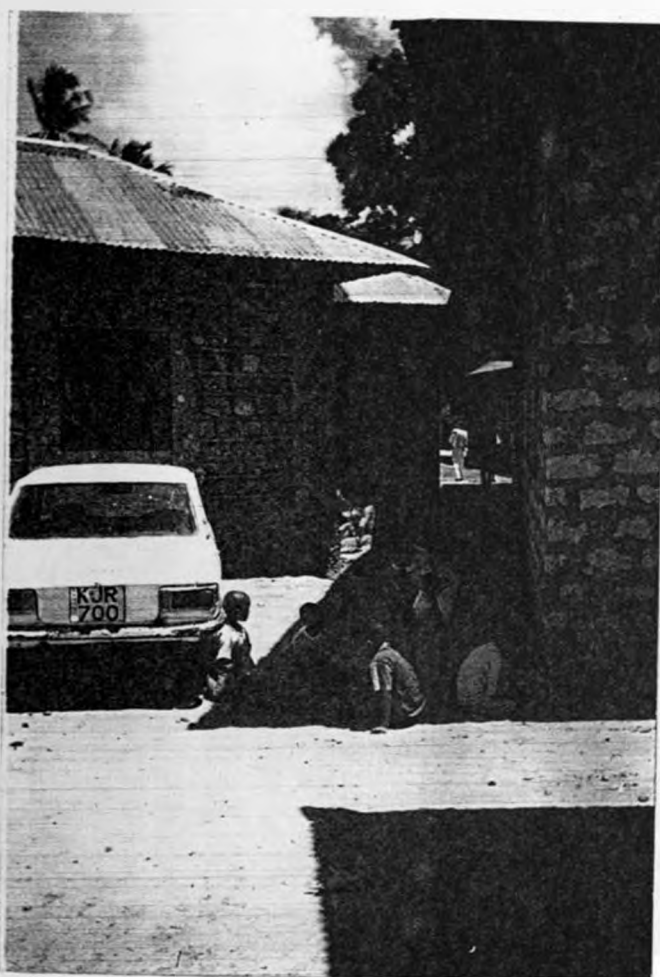


Plate 1. This is part of the unplanned houses at Kisauni. Note the design and materials used. The house on the right is built using council recommended materials while the one on the left is built using 'local' materials. Residents claim that the 'local' materials are cheaper and more durable.



Plate 2. Part of the planned swahili settlement at Kongowea. Some services were provided (water,electricity and access roads). Note the kiosks coming up in the neighbourhood and poorly maintained houses becoming almost inhabitable.

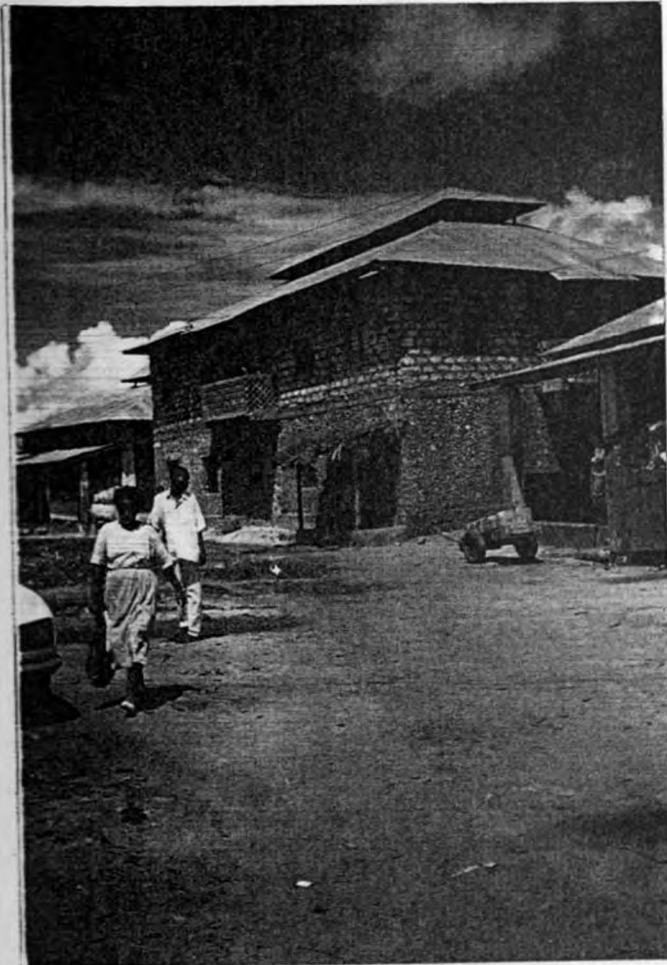


Plate 3. A modified swahili house at Kongowea. This allows high density populations of over 300 per hectare. Note the poorly maintained roads.

£

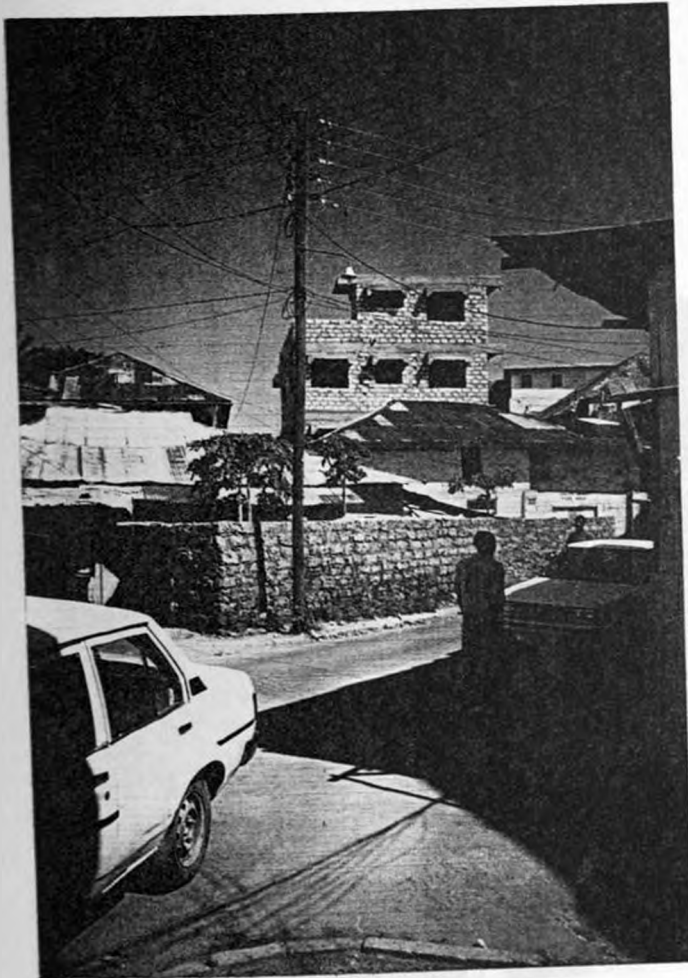


Plate 4. This is an illegal story building coming up in Majengo, formerly the village layout scheme. A zoning scheme should discourage this type of development.



Plate 5. An old building in the island with its roofing material, *makuti*, replaced with tiles. Note the walls are made of mud.

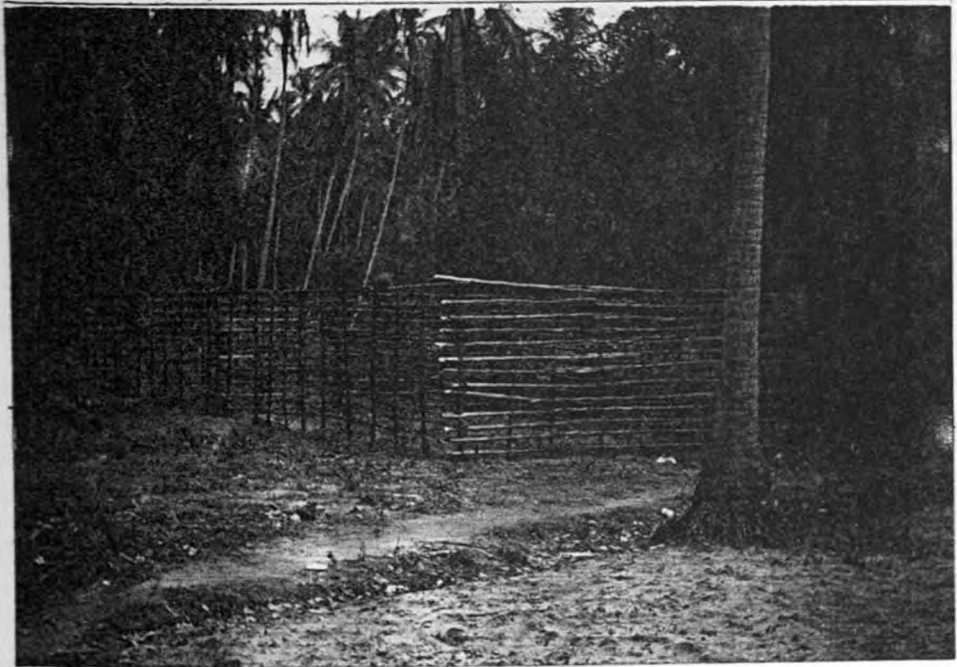


Plate 6. An outline of swahili house. Note the different materials used. A complete house will have its roofing either as thatch (*makuti*) or iron sheets.

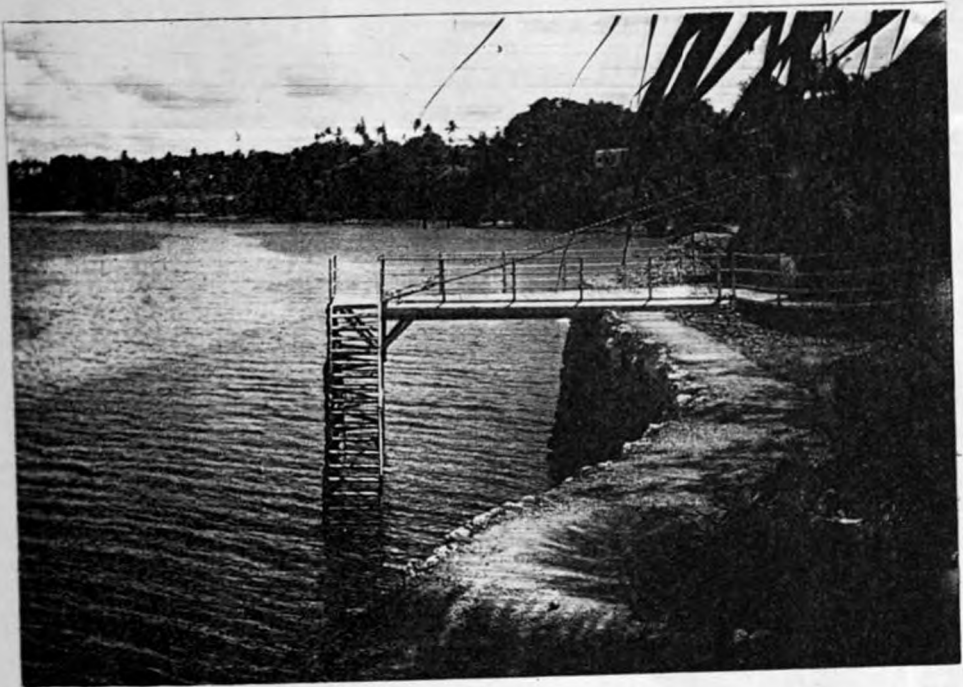


Plate 7. This photograph also shows flouting of beach construction regulations. The council prohibits beach construction within a 100 feet of high water mark. But construction is carried out right into the ocean.



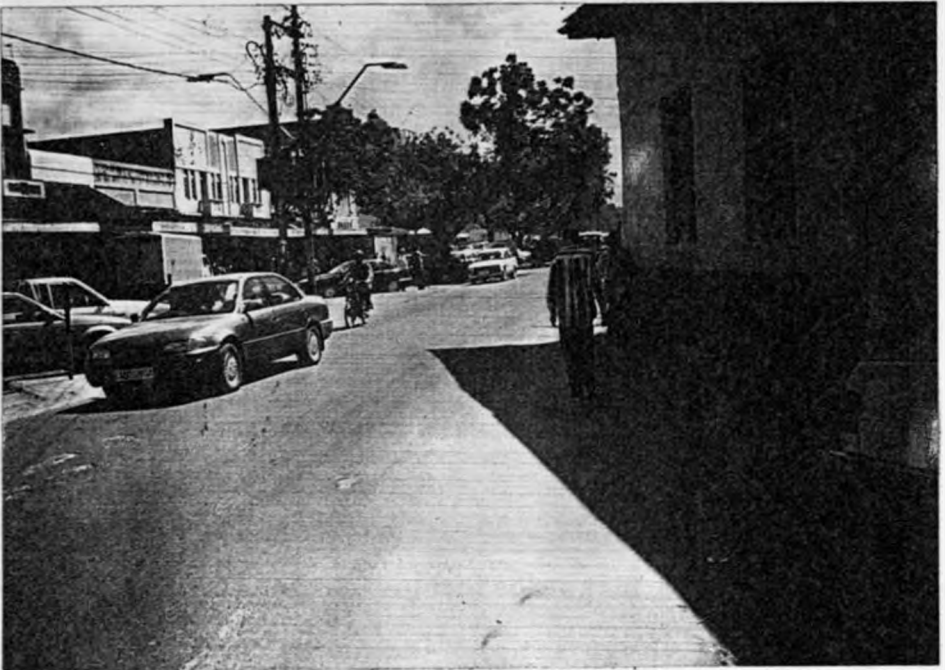


Plate 3. This is one of the main roads (Digo Road) in Mombasa town. No building line. Note a house extending right into the road, almost blocking the visibility of the road.

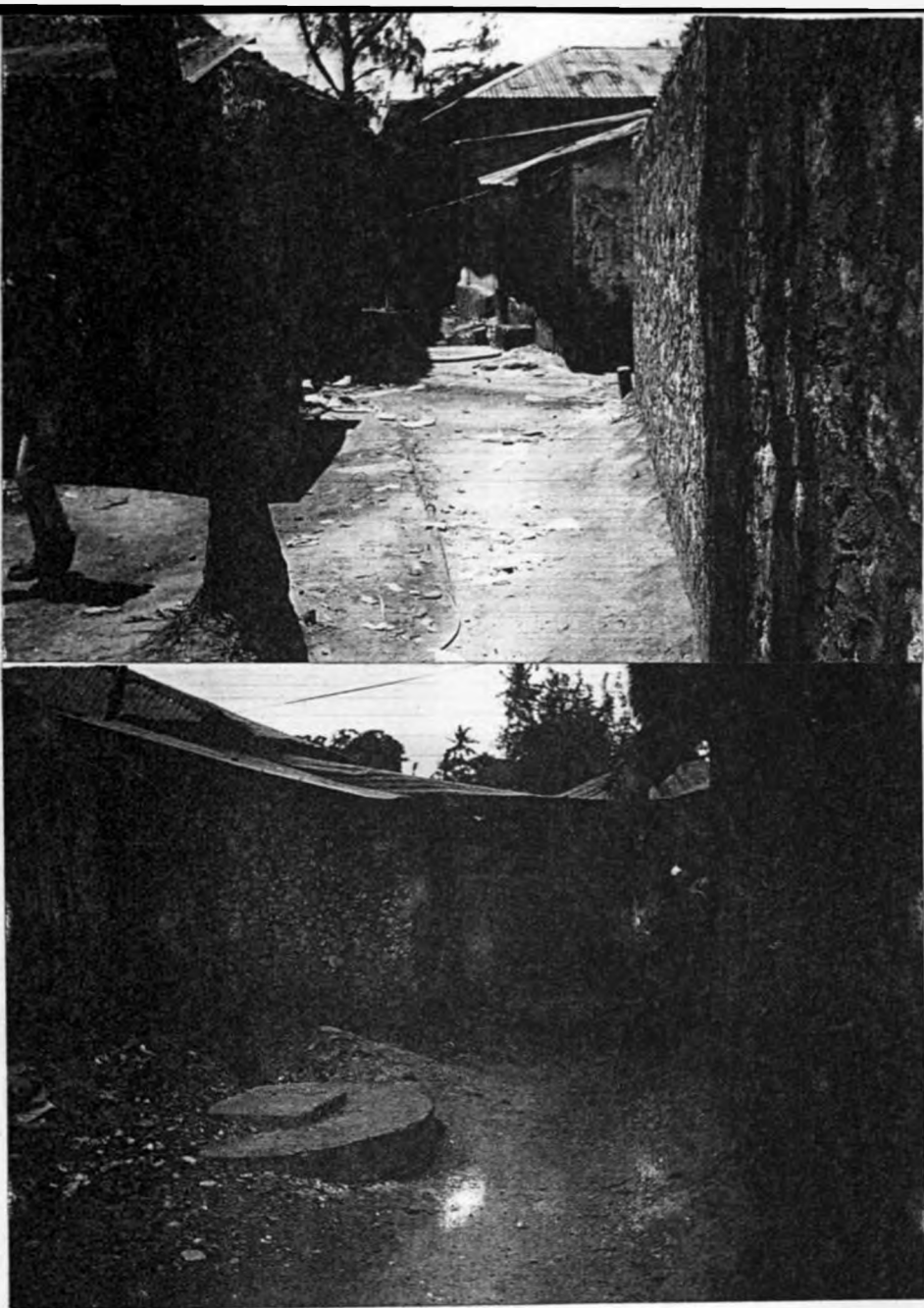


Plate 9. The spontaneous, unplanned swahili housing development in Kisauni, with illegal extension. Note the untidy surrounding and the variety of building materials used. Evident is the lack of space between buildings shown by people squeezing themselves to have access between buildings.



Plate 10. This is an example of an 'undeveloped' plot in the island. This plot may, however, remain undeveloped for a long time due to the high rate of land speculation. Taxation policies should be used to discourage land and building speculation.

## CHAPTER FIVE

### 5.0.0 LOCAL AUTHORITY: DEVELOPMENT CONTROL AND GOVERNANCE

This chapter presents a fairly detailed picture of the Kenyan local authorities and development control responsibilities. The evidence for this comes from studies and interviews carried out in Mombasa municipal council. It might be expected that variations would be found between authorities in terms of structure depending on resource availability and level of administration ranging from the urban (smallest) to the city council of Nairobi (the largest in Kenya). These variations therefore, have a bearing on the councils capacity to control development.

Currently local government(s) in Kenya consist of two parallel systems of authority. Most large towns are governed by all purpose single-tier authorities which discharge all the statutory functions of local government within their administrative areas. The smaller towns, governed by counties, on the other hand, are two-tier authorities in which there is the county council for the whole county (district) whose areas are subdivided into either the urban or town councils. The powers and duties of local government are shared between these two tiers, but the two kinds of councils discharge slightly different mixes of functions. The more strategic functions, such as education major roads, local and Regional planning, are the responsibilities of the county councils whilst the tactical services such as secondary roads, street lighting, building regulations, are discharged by either the urban or town council. Mombasa being a large town is governed by an all purpose single-tier authority which discharges all the statutory functions of the local government within its areas of jurisdiction.

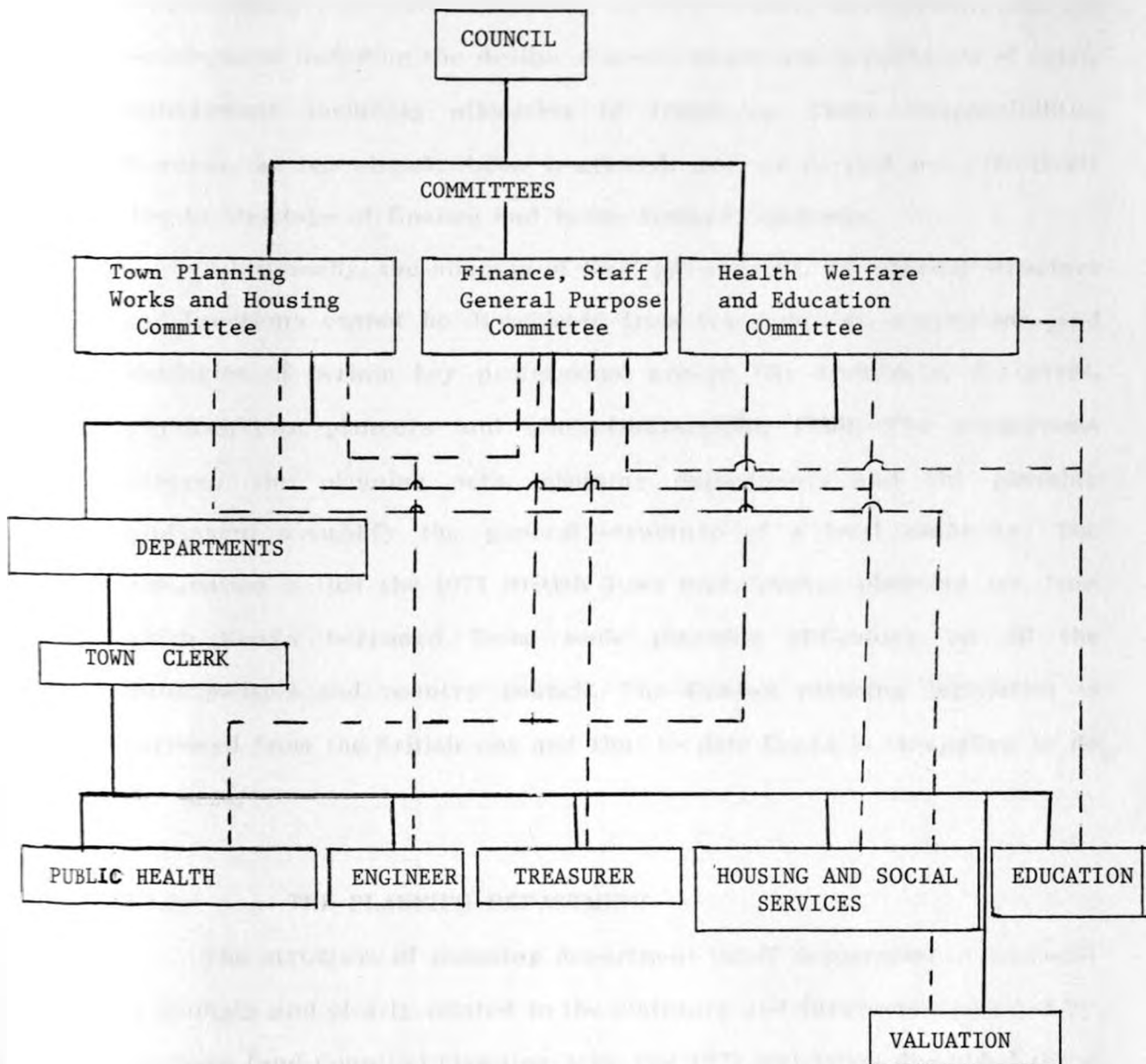
The Mombasa municipal council, like all the large local authorities in Kenya, is characterised by a very strong developed departmental structure characteristic of the traditional English County Borough model. That is to say that both its bodies of elected members and their employees are fairly strictly divided into committees and departments which are closely related to a specific function of local government usually defined by a particular Act (or series of Acts) of parliament.

Not all committees or departments are defined or required by statute either, and many of the functions of local authorities are a matter of individual choice for each local authority depending on its problems and predilections. The departments-to-committee relationship is not always one-to-one. It is often the case that one department will report to several committees and conversely several departments may report to one committee (eg. to finance and general purpose committee). A special case is that of the clerks department and the clerks office functions. The 1965(1970) local government Act defined the clerk, the Chief Legal Officer and head of the councils staff as *primus inter pares*, with respect to his fellow chief officers - the needs of the other functional departments.

The responsibility both for determining policy and for supervising its execution is vested upon the elected representatives, who form a single organ-the council itself. In Mombasa there are three standing committees of the council and their relationship with the various departments is diagrammatically represented in figure 16. The town planning, works and housing committee, for instance, has the responsibility of regulating the use of land in the town, approval of building codes, the design and

FIG 16

MOMBASA MUNICIPAL COUNCIL:  
COUNCIL COMMITTEES AND DEPARTMENTAL STRUCTURE.



— Direct Line of accountability  
- - - Indirect line of accountability.

Source : MMC

implementation of housing schemes, provision of infrastructure and maintenance and improvement of housing stock. The committees other responsibility also include advising on new housing development and re-development including the design of new schemes and supervision of estate management including allocation of tenancies. These responsibilities however, as has already been mentioned, are not carried out effectively due to shortage of finance and hence trained manpower.

Additionally, the shaping of local government, its internal structure and functions cannot be dissociated from the activities, aspirations, and ideologies of certain key professional groups like architects, designers, physical/town planners and others (McLoughlin, 1980). The connections between the planning acts, planning departments and the planning profession exemplify the general structure of a local authority. The explanation is that the 1971 British Town and Country planning Act, from which Kenya borrowed from, made planning obligatory on all the municipalities and country council. The Kenyan planning legislation is borrowed from the British one and thus to date Kenya is struggling to do the same.

#### 5.2.0 THE PLANNING DEPARTMENT

The structure of planning department (staff deployment in sections) is strongly and clearly related to the statutory and functions demanded by the Town (and Country) Planning Acts. The 1971 legislation demanded three principal classes of work:

- 1: The preparation and review of the development plans for the whole of the authority's area;

- 2: The preparation and review of detailed development plans for parts of the authority's area (comprehensive Development Area maps, supplementary town maps, town centre maps etc);
- 3: Development control, that is, the receipt of applications and the framing and issuing of decisions upon each application.

The Act clearly states the categorisation of the planning department. The professional or technical planning section is supposed to be categorised in three subsections, "plan", "design" and "control" sections respectively. The "plan" subsection is meant to be a strategic, broad based section whose work involves studying not only the council's jurisdiction area, but areas beyond (eg. sub-regional and regional areas). The "design" section is supposed to deal with more detailed physical studies and planning works for parts of the authority's area and consequently preparing local physical development plans or short term plans while the "control" section is supposed to deal with the professional and technical operations leading up to development control decisions and all associated work.

Whilst planning authorities vary widely in their administrative and management structures, in the ways they deploy their planning department staff, and in their creation of specialist groups to study particular problems, all of them should at least possess development control staff with posts permanently assigned to that function. Control is looked on as a distinct operation which must relate to all scales and levels of detail in policy. A critical assessment of the Mombasa municipal planning department revealed that all the planning, design and control work is done by the 'chief' planning officer of the council. The powers vested upon one



individual has created an administrative and control structure open for corruption and with loop holes which have been exploited by the interested groups to flout the control procedures which has in turn brewed mistrust between the council and the Physical Planning Department.

For whilst the planning Acts require the submission and review of development plans and whilst the minister possesses considerable powers to approve a plan in default of a submission or review by the authority, it is almost inconceivable that they would be invoked if only because of the openly strained relationships between the physical planning department and the local planning authority. In a situation like this, the pressure to sustain development control activities is relentless. Day in, day out; applications are submitted and must be dealt with (unless the applicant agrees to delay) within two months. If not, the applicant may appeal to the relevant authorities (represented by the liaison committees) to issue a decision.

In some authorities this section may have its administrative and technical staff directly attached and exclusively for their assistance. Again the daily pressure of routine development control tends to affect the disposition of the non-professionals as much as professionals so that in some cases we find ancillary workers attached specifically to control section in addition to the centralised administrative, clerical and technical group. No wonder this has made development control seem too much like a difficult work to many officers.

### 5.3.0 PLANNING AND POLICY IN KENYAN LOCAL GOVERNMENT

Usually policies are more general than discrete actions (eg. clearing a street of unauthorised housing) and more specific than broad social goals (such as raising the standard of mobility or providing decent accommodation for all). Discussions of policy involve discussions of ends and means. Liberal models of government are based on the notion that the demands of the community are the key factors leading to response in governments.

Policies in government are thus the basis of day-to-day administrative actions and decisions. If we regard the ongoing process of decision making as a hierarchical network, then policies occur near the top. There they serve as statements of means to provide for progress towards the goals and objectives of an agency or organisation. Policies must therefore interpret goals and translate them into operational form as to include objectives which are more precise, more operational statements. Such statements can provide a framework for even more specific programmes of action relating to a unique geographic or functional subsystem.

For example, a goal of government may be to improve the housing conditions of the population, say of Mombasa. Objectives then would be expressed in terms of *policies* to clear slums at Bombolulu in Kisauni, give subsidies to council housing, build new and expanded houses, legislate for improvement areas and conservation areas—the beaches and mangrove forests along the beach—and so forth. These would be backed by appropriate programmes as a means to achieving the stated objectives. Ideally, the presence of policies are expected to make civil servants, local

governments officers, housing managers, land lords, architects, builders, investors and tenants aware of a framework within which decisions can be made and also acts as a guide to the makers of individual decisions. But due to the breakdown of the administrative and management structures of central and local government authorities this does not happen.

Jessops and Friend (1979) regard planning and development control as a process of strategic choice "if the selection of current action is made only after a formulation and comparison of possible situations over a wide field of decision relating to certain anticipated as well as future situations." Thus local authorities are both regulators of the actions of all kinds of individual and institutions as well as providers of the goods, resources and information to give a variety of services to the community.

They developed a conceptual model to discuss the nature of planning and control and this consists of interactions between a 'governmental system' and a 'community system'. These interactions are typified by the emergence within the community system of a 'situation' or 'problem' which could be routine and trivial in itself, such as poor and deteriorating housing condition. When a problem is perceived by the governmental system, having crossed the interface from the community side, it is usually translated into terms 'acceptable' or 'meaningful' to the governmental system. Put another way, the problem as expressed and experienced by the community may well be interpreted in quite a different way by the governmental agency whose job is to take note of the problem and act upon it. This is why the critical housing situation in Mombasa is looked at by the 'governmental agent' as a situation created by 'professional squatters', and not a real problem.

Due to the fragmented bureaucratic administrative structure of the government agencies/departments, the problem has been perceived in a fragmented manner. Sometimes problems are not officially recognised at all if there is no agency in existence to deal with it. Such that the problems of slum and squatter dwellers are 'the peoples own' problems and not the governments problem. For such problems to be addressed and plans prepared looking into solutions to them there must be an official transformation in the way urban problems are perceived.

#### 5.4.0 CONTROL AND URBAN GOVERNANCE

At independence Kenya inherited and has since then advocated a view of government which sees its principal function as a set of institutions performing certain brain-like functions within the society. Rose (1971), however, argues that this is not the only way or model of looking at governmental and planning process. Like any other model it raises certain difficulties and ambiguities.

Nevertheless, a number of important issues in governance among them land use control are the subject matters of urban governance and planning. Increasingly there are demands that the government should be responsive to internal current of change and that its actions should be more accountable to the community and that it should operate better as an important part of 'social learning system' (Schon, 1981). These processes place heavy reliance on communication networks both within the formal organ of government and its planning systems, and between them and the community and its urban systems.

The sheer complexity of the conjoint system resulting from rich

interlinkages between the governmental planning systems and the urban community systems suggests a number of things. Firstly that government should not be a responsive entity bending to winds of change blown from outside it. But, equally for a governments to act effectively as regulator system it needs requisite variety and this needs the input of information from the enveloping community system. The relevance, responsiveness, and adaptability of government depends critically on its connections with the community so that facts, ideas, demands and suggestions can be transferred within the formal institutions of government (Vickers, 1978).

It is especially important for both the community and the government to have the capability to change those land use and development control elements—like the housing codes—in relatively appropriate time so as to ensure responsiveness and relevance; but that may be conditional on the stability of the capacity to initiate and accomplish such changes. Response, relevance, and foresight in governance, the ability to deal effectively with current planning problems, to anticipate those which could emerge, will depend not only on formally defined organisational framework but also on those informal networks which "have long seemed to enable people to get things done when the formal networks were not there or failed" (Power, 1981). These latter networks are increasingly becoming important and requiring more people who can build, operate and move around in them. It is time the government considered such strategic planning and control principles within the sort of framework we have sketched in this study.

The arguments we have put forward in this chapter extensively considered the future of statutory planning in local government as well as studying current practice in Kenya, and especially in Mombasa municipality. The regulations governing the procedural aspects of land use control are somewhat complicated and ambiguously understood.

What this means is that local government in Kenya will have to come to terms with several different sorts of realization simultaneously. First it means they have to adjust their bureaucratic inefficiencies in management and control, and secondly be prepared to initiate policy reforms that will be relevant to our situation. Positive results in development control can be achieved if planners and policy makers have a better understanding of the implication of their policies. At the same time development control should be integrated not only with detailed physical planning but with many other kinds of public activities of a detailed executive kind.

This means that in restructuring physical planning and development control, policy must be closely related to all other kinds of planning going on in the local authority-in education, social services, and transport for instance-which are part and parcel of the whole business of control and urban planning.

## CHAPTER SIX

### 6.0.0 SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSIONS

#### 6.1.0 SUMMARY OF FINDINGS

The sole purpose of this chapter is to recall the critical findings of the study with a view of emphasising the issues which need to be addressed urgently, and policy measures affected. Physical planning and development control in Mombasa has been looked at from two levels: the national and local levels. The ineffectiveness of control measures has been reflected by the unco-ordinated developments and unauthorised subdivisions of land among others. This shows that land use regulation and policies have been unable to guide development to the required levels in Mombasa.

It was noted that the ineffectiveness of regulatory measures has been due to a number of factors among them rigidity of regulations, land tenure system, poor land management and administration by the council and the historical developments of the town.

Rigidity and obsolescence of the building code and the procedures in the enforcement renders it ineffective. The codes seem not to be suited to the local-physical, economic, social, and cultural conditions. The enforcing officers find it difficult trying to interpret, let alone enforcing them. Mombasa, unlike many other Kenyan towns, grew *organically* through many centuries. The pattern of development which planners desired at the beginning of this century, and which current planners insist on, thus conflict with the already developed pattern of development making control difficult.

Historical factors play a central role in the present development pattern in Mombasa. For instance, early this century there was the *village layout planning* otherwise called 'no grade' or 'minimum grade' planning which to date has continued to influence siting and construction of buildings in Mombasa even after it was repealed in 1974. The situation is made worse by the existing land tenure system. A large part, (78%), of the municipality's land, is under the freehold system where land is held under the Islamic law, (ownership defined by concepts codified in the Ottoman Land Law of 1858). The (*mulk*) private land, (freehold and leasehold) is the largest land ownership in Mombasa<sup>1</sup>. Owners transact land freely and so is its development.

In terms of governance, land administration, and management and the way the council has organised and delegated duties to its planning department staff, leaves a lot to be desired at least as far as the legislative requirement is concerned. This disorganisation, especially within the planning department, has resulted to mistrust between the M.M.C planning department and the Physical Planning Department of the Ministry of Lands resulting into poor urban management in general, and ineffective development control in particular. Then there is the lack of advisory development plans for Mombasa's residential neighbourhoods. The absence of this vital document means that planners have '*no basis*' on which to enforce rules. The result then has been manifested by the spontaneous development in large parts of Mombasa's neighbourhoods which are accompanied by unauthorised land subdivisions.

---

<sup>1</sup> A large part of this land is used subject to the Wakf Commission's Act where change of user is extremely difficult.



The illegal land subdivisions on the other hand have brought about unprecedented land (and building) speculation. It is in these illegally subdivided plots that mixed land uses are found. Various land uses are found juxtaposed without proper planning. Examples include industrial, commercial and other uses found amidst residential estates like in Kongowea. Accompanying this confusion is an acute deficiencies in services and facilities, the sum total of which is a chaotic life in the neighbourhoods similar to the one described by Rev. Charles New in 1860s (sec.2.4.2). Solutions to these problems require a comprehensive land use policy with proper administrative and regulatory machinery to ensure proper co-ordination in land uses. The following are issues of immediate concern:

#### **6.1.1 Unco-ordinated Developments**

It has been shown that Mombasa municipal council is plagued with sporadic developments. Physical development plans that exist refer to the old proposals which need urgent revision. No plan or advisory plan(s) has ever been prepared since the 1971 Draft Physical Plan for Mombasa. The local by-laws, which are obsolete have not been enforced effectively to curb unauthorised developments. The rate of unauthorised developments continue to rise every year which implies that future planning of Mombasa will encounter serious problems and will adversely affect development control efforts.

#### **6.1.2 Freehold Titles to Land**

Land in Mombasa municipality is predominantly freehold. Where as land ownership according to law has only exclusive rights, most of the land owners have understood land ownership as absolute. Freehold title which

is meant to give security of tenure to the land owners has become a constraint to the availability of land for urban development.

### **6.1.3 Land Subdivisions**

It has been demonstrated that the rate of land subdivision in Mombasa municipality is higher than most other towns in Kenya and continues to rise. Subdivision *per se* is not a problem, but rather subdivision of land is done in disregard to the existing regulations which are themselves inadequate to manage it properly. Urban land is normally subjected to subdivision provided it is properly regulated.

### **6.1.4 Land and Building Speculation**

This problem is brought about by the high rate of land subdivision and sales in the municipality. The buyers fence off the plots and wait for a short while before they dispose the plots again without having carried out any developments. In some cases the buyer also subdivides the plots further into even smaller plots or parcels and disposes them. In the end the undeveloped plot changes hands without any development and yet the land price continues to rise.

The island is all used up and if land will be required for urban development it will mean acquisition. Acquisition, however, seems unlikely, and the recent construction of a car park on top of a market (Mwembe Tayari) building is evident to this. Both the central and local government have limited resources for developmental projects and higher compensation costs, in the event of land being acquired, are bound to drain on the already limited resources.

### **6.1.5 Mixed Land Uses**

The essence of planning is to try and segregate or put in close proximity land uses that are complementary. However, it has been noted that various land uses are juxtaposed without proper planning. All sorts of developments, some of which are incompatible, - commercial, industrial, educational et cetera - are taking place in Mombasa's residential neighbourhoods. The result has been environmental degradation.

Already heavy investments have been made in some of these developments. Future corrections will no doubt prove costly. Remedial measures are therefore urgently called for.

### **6.1.6 Acute Deficiencies in Services and Facilities**

One of the major characteristics of Mombasa's residential neighbourhoods is the acute deficiency of community services and facilities. Roads are unmotorable, particularly in wet weather. Water has been served only to few houses, no sewage facilities, pit latrines are commonly used which in densely populated areas constitute a health hazard, streets are unlit and littered with garbage, the list is long. In addition there are inadequate health and education facilities and often children play on the dirty, narrow alleys between buildings.

### **6.1.7 Lack of Effective and Efficient Management and Administrative Machinery**

The study has established that due to inadequacy of resources, the municipal council of Mombasa is unable to police the neighbourhoods to discourage inappropriate usage and mismanagement of land. It is this failure that has led to a chain of uncontrolled and unplanned developments

in the area. The legal instruments available for the control of urban land use have not been applied effectively due to manpower shortages.

## 6.2.0 RECOMMENDATIONS

One of the study's objectives was to propose a workable approach to the utilisation of land use regulation. In this discussion seven main problems, some of which are interrelated, have surfaced. The problems which are mainly as a result of ineffectiveness of land use control measures, require urgent policy actions for proper guidance of Mombasa's development.

Our policy recommendations will aim at achieving a more efficient and effective land use control and management system. Policy issues suggested will also aim at establishing a better working machinery between the central government, local government and the local community. In essence, we shall be looking for policies that seek to effectively control development and avail land for the purpose of public benefit, that is, policies that ensure efficiency and equity in land use. It has been observed that objectives generally put forward for urban land use policies, although themselves have some shortcomings, can be summarised as being a harmonious spatial urban patterns which minimise the use of resources relative to economic and social benefits. They are also meant to ensure an appropriate supply of urbanised land for dwellings, community and recreational activities and the provision of basic urban services. It has been observed also that land is a scarce resource which needs careful planning and utilisation. It is on this understanding that we proceed to make our recommendations.

Some of the policy recommendations may have a national implication while at the same time it should be noted that a policy approach that may solve development problems in one place may not solve the same problem in another area.

#### **6.2.1 Preparation of a Comprehensive Land Use Plan**

Illegal developments in Mombasa have been attributed to the fact that there exists no land use plan to guide development. The local authority has nothing to guide it in assessing development proposals. The current practise in Kenya is that the physical planning department prepares development plans for the local authority which after approval by the minister becomes binding to all developers. There were proposals to delegate these duties to the physical planning department at the district level, but this has not yet been done. Such a plan is long overdue in Mombasa and is justified by the problems currently posed by the illegal developments in the area.

Even with stringent regulations, the local authority would still need a plan for guidance. A land use plan will reduce the dangers of mixed uses such as those witnessed in Mombasa's residential neighbourhoods. Such a plan would serve as a first step towards fostering a co-ordinated development that will create a healthy and pleasant environment for the urban dwellers.

#### **6.2.2 A Case of Stringent Legal Measures**

Although written law and building control legislation does stipulate the requirements for urban land development, enforcement of the law is very weak indeed in Mombasa. This calls for the re-examination of the role of local authorities in matters of land management (use and control) and

administration (allocation, registration and leasing). There is need for increased capacities of the local authorities to enable them institute proper and effective management and governance techniques.

The problem of uncoordinated development is not a unique problem of Mombasa, but is prevalent in most of the Kenyan towns and require solutions deliberated at the national level. The central government should, therefore, as a first step allow more power and autonomy to local authorities to make by-laws and enforce them accordingly. The regulations to be determined at the local conditions and should reflect the peoples own aspirations, values and understanding.

### 6.2.3 Need for Proper Subdivision Procedures

Lack of proper subdivision procedures in Mombasa has led to many subdivisions and the consequent land and building speculation. When land sub-division is carried out without any planning guidance and standardisation then it is definite that a latter date it will affect the orderly development of the town and make planning difficult.

What the subdivision procedures should take cognisance of is the traditional/cultural demands to land inheritance and hence subdivision, especially among the predominantly muslim community. To avoid conflict of procedures the two should be harmonised.

### 6.2.4 Curbing Speculation

Land and building speculation are problems of national concern and require definite and stringent policies, if they are to be curbed. An urban land taxation system should be instituted on capital gains from property. This will encourage optimum development and restrain speculation. If high taxes are charged/levied on parcels of land that are prone to speculation

the owners are likely to give or sale them for urban development. Alternatively, the council could either encourage demolitions, especially of dilapidated buildings, and extensions of properties to sky scrapers or movement of development to more spacious areas outside the island.

#### 6.2.5 Solving the Housing Problem

Unplanned residential developments have been noted as the predominant problem in Mombasa. Houses built of local materials are sporadically constructed. The spontaneous development of housing has made it difficult to provide services and facilities. What could be done is to re-examine the colonial building standards and/or codes and replace them with more relaxed, meaningful and more acceptable standards that allow for rapid supply of houses for residents.

The local building standards should be codified to constitute a minimum requirement for building, but instead introduce more stringent rules on siting and layout of buildings for the purpose of service provision.

#### 6.2.6 Community Involvement

Support from the community and the informal groups (the traditionally based organisations) should be sought, otherwise the council will not achieve the desired results and powers of policing and coercion. The council has a meagre force of inspectors that help in policing its area of jurisdiction. There is need therefore for new legislation that will provide for greater community involvement in matters of planning and enforcement of regulation(s).

Depending on the degree of commitment by the council, in terms of funds and personnel, there will be need for planning extension officers to

the neighbourhood. The extension officers may be patrolling the neighbourhood on a daily basis to discourage illegal development and also facilitate the flow of informalities between the policy makers, planners and politicians and members of the community.

### 6.3.0 CONCLUSIONS

This work set out with the hypothesis that there is lack of coordinated development in Mombasa municipality due to the prevailing land tenure system and also because of the nature of land use regulation and policies that are existing.

It has been shown that indeed land tenure system in Mombasa has been a constraint to orderly development of the town and that the existing land use regulations and policies have had little if any influence on the present development structure of Mombasa.

Solutions have been sought that aim at improving the situation. The study confirmed that Mombasa, especially the mainland areas, is developing without any official guidance and that the role of the council in development control has been very minimal. The municipality has, apart from formulating by-laws, had little done in enforcing the same. Lack of enforcement of regulations has been due to inadequacy of resources - both financial and manpower and absence of advisory development plans for freehold areas. This has resulted into numerous problems that pose a threat to the orderly physical development of the area now and in future.

Since the land control measures have proved ineffective, we have proposed, as a first step, preparation of a comprehensive land use plan and/or advisory plans which are to be backed by stringent measures to



be adopted through appropriate legislation. In addition there is need for immediate improvements in updating the local ordinance and to enlarge the supply of skilled manpower to administer the control system. The council should adopt the newer control techniques together with good specific strategic development planning so as to meet the desired social objectives of efficiency and equity. In the case of Bombay, we have suggested that these measures should be exercised in close collaboration with the community. However much needs to be done at the national level in re-examining and revising the current planning legislation to reflect our ideals, values, aspirations and understanding.

#### SELECT BIBLIOGRAPHY

- Agevi, E et al (1993) Proceedings of the Workshop on Implementation of Revised Building By-Laws and Planning Regulations.
- Anderson, K.B (1978) African traditional architecture. A study of the housing and settlement patterns of rural Kenya. Nairobi, oxford university press
- Archer, R.W (1974) Land Policy for Planned Urban Development.
- Arrow, J.K and Frank, H.H (1971) General Competitive Analysis. Edinburgh, Oliver and Boyd.
- Booker, J and Devereil, M.N (1947) Report on the Economics and Social Background of Mombasa Labour Disputes. Nairobi, Government printers.
- Catanesi, A.J (1988) Urban Planning. New York.
- Chege, O (1978) Land Constraints to Urban Development: The case of Nyeri Town. Unpublished M.A Thesis. U.S.N.
- Churchil, H.S (1983) The City is the People.
- Courteny, M.J (1989) "Intervention through Land Use Regulation" in Drunkerly, H.B. Urban Land Policy: Issues and Opportunities.
- Davidoff, P (1965) "Advocacy and Pluralism in Planning." Journal of American Institute of Planners.
- Davin, D.H (1976) Land Policy and Urban Growth.
- de Blij, H.J (1968) Mombasa: An African City, Northwestern University Press

DeWraff, J (1957) Theoretical Welfare Economics. New York, Cambridge University.

Denyer, S (1975) African traditional architecture. Heinman

Drunkerly, B.H (1985) Urban Land Policy: Issues and Opportunities. World Bank.

Dyer, H.T (1963) Mombasa Master Plan. Mombasa municipal council

Gans, H.T (1968) People and Plans. New York, Basic book

Garner, J.I (1981) Practical Planning Law. London. Cresswell Inc.

Hamid, S (1981) Urban Design Review. Washington.

Hooper, C (1975) Design for climate. HRBF, UON

Jacobs, J (1961) The Life and Death of Great American cities. New York.

Jessop, N.F and Friend, J (1969) Local Government and Strategic choice. London. Tavistock.

Koebel, J (1969) Principles and Practise of Town and Country Planning. London.

Kelly, B et al "Building and Land use control" Design and Production of houses. McIlw-Bill.

Kenya, Republic of: Registered Lands Act. Nairobi. Government Printers.

.....: Physical Planning Act 1996. Nairobi. Government Printers.

.....: Physical Planners Registration Act 1996. Nairobi. Government Printers.

.....: Local Government Act 1965. Nairobi. Government Printers.

- .....: Land Planning Act 1968. Nairobi, Government Printers.
- .....: Government Lands Act. Nairobi, Government Printers.
- .....: Land Control Act. Nairobi, Government Printers.
- .....: Public Health Act 1972. Nairobi, Government Printers.
- .....: Town Planning Department, Mombasa Draft Physical Development Plan 1971.
- .....: Town Planning Hand Book. Nairobi, Government Printers.
- .....: Town Planning Department, Housing in Mombasa.
- .....: Land Acquisition Act. Nairobi, Government Printers.
- .....: Kenya Gazette, July 1975. Nairobi, Government Printers.
- .....: Town Planning(Ordinance)Act. Nairobi, Government Printers.
- .....: Building Code: The Local Government (Adoptive By-Laws) Building Order(1968) and Grade II Building Order 1968.
- King'oriah, G.K(1980) Policy Impacts on Urban Land Use Patterns in Nairobi, Kenya:1899-1979. Unpublished PhD Thesis.
- Lichfield, N (1976) The Economics of Planned Development. London. Estates Gazette.
- Lichfield, N (1980) Land Policy in Planning. London.

- McAuslan, J. (1986) *The Ideologies of Planning Law*. Oxford, Pergamon Press.
- McLoughlin, J.P. and Donohoe, J. (1972) *Development control in Britain*. Manchester, O.U.P.
- McLoughlin, J.P. (1971) *Control and Urban Planning*. London
- Okpala, D.C.I. (1992) "Land survey and Parcel Identification" *Proceedings of the 1992 Annual Meeting of the International Association of Agricultural Geographers, University of Toronto, Canada.*
- Ratcheliff, R.C. (1979) *Urban Land Economics*. Westport.
- Patchiff, R.C. (1979) "Housing Standards and Housing Research" *Land Economics*, Vol. 28.
- Rose, R. (1971) *Models of Governing*. Glasgow, University of Strathclyde.
- Schon, D. (1981) *Beyond the Stable State*. London, Temple Smith.
- Shibira, M. (1978) *Land policy and Urban Development: The case of Kakamega town*. Unpublished M.A Thesis, U.S.S.
- Siegman, B.E. (1972) *Land Use without Zoning*. London, Croom Helm.
- Simmie, J.L. (1971) "Physical planning and social policy." *Journal of Royal Town Planning Institute* 57
- Solesbury, W. (1984) *Policy in Urban Planning*. New York, Pergamon Press.
- Stren, R.E. (1978) *Housing the urban poor in Africa: Policy, Politics and Bureaucracy in Mombasa*. California, U.C.S.
- Syagga, J.M. (1979) *Management of local authority housing estates in Kenya*. Unpublished M.A Thesis, U.S.S.
- Syagga, J.M. (1987) "The impact of building design on maintenance cost of residential housing estates in Mombasa"

municipal council. Unpublished PhD thesis, 1968.

UN. Department of Economic and Social Affairs. 1975: Urban Land Policies and Land Use Control Measures, Vol.1-6 and Vol.7, Global Summary.

UN. Department of Economic and Social Affairs: Social Programming of Housing in Urban Areas. Report of the Ad hoc Group of Experts, August 1978. New York.

Varian, H.R (1973) Microeconomics Analysis. New York, Norton.

Vickers, G (1970) Value System and Social Progress. London, Tavistock.

Power, J (1971) Planning: Myth and Magic. London and Coventry.

Wexler, J and Park, P (1985) Housing and local government. London, Lexington press.

Wheaton, W, Migon, G and Myer, A.C. (1986) Urban Housing. New York, Free Press.

Gubba, A (1978) Village layout system in Mombasa: A case of 'minimum grade' Development. UNDP, 1978.

Vahya, S.S (1979) Urban Land Policy in Kenya. Nairobi.

APPENDIX 1(a)  
UNIVERSITY OF NAIROBI  
DEPARTMENT OF URBAN AND REGIONAL PLANNING  
M.A PLANNING, 1996/7.

GENERAL HOUSEHOLD QUESTIONNAIRE

Name of interviewer. . . . .  
Date of interview . . . . .  
Estate/ward name. . . . .  
Municipal Recommended land use. . . . .  
Number of household. . . . .  
Number of persons in the household. . . . .  
Land ownership. . . . .  
For how long have been on this land/plot? . . . . .

SUBDIVISION

1. Have you ever subdivided your land/plot? [yes] [no].
2. If yes, what were your reasons for sub-dividing?  
. . . . .
3. What procedure did you undertake before subdividing?  
. . . . .
4. Was the municipal council aware of the subdivision?  
[yes] [no].
5. If no, what was/were your reason(s)? . . . . .  
. . . . .
6. Who drew the subdivision plan for you? . . . . .
7. How many times have you ever subdivided your land/plot? . . . . .
8. What was the initial acreage of your land/plot? . . . . .
9. What is the acreage now? . . . . .
10. Are you aware that there are specific parts of the laws  
where only specified land use(s) can be put? [yes] [no].

HOUSING

- 11.The type of building
- 12.Number of rooms
- 13.Total house area(m<sup>2</sup>)
- 14.Plot coverage
- 15.Building materials used. 1) Roof..... 2) Ceiling.....  
3) Wall.....4) Floor.....
- 16.Plot ratio.(expected)
- 17.Did the municipal council approve the building plan?  
[yes] [no]. if no, who did?
- 18.Do you have any other houses/buildings on this land/plot which is not for residential use? [yes] [no].
- 19.If yes, what is the building used for?
- 20.Does your house have all the required services? [yes] [no].
- 21.If no, which ones are missing?

GENERAL

- 22.What do you consider as a serious problem in this area?
- 23.What are your views about a possible compulsory acquisition?
- 24.Do you encounter any obstacles whenever you want to carry out any development?
- 25.Whom do you consult in case of land/plot boundary disputes?
- 26.Are you aware of legal (land use) control measures that affect this area?  
[yes] [no].
- 27.If yes, Which ones are you aware of: 1) Zoning,  
2) Building regulations, 3) Subdivision regulations,4) Other
- 28.Any other.

THANK YOU.



APPENDIX 1(b)  
UNIVERSITY OF NAIROBI  
DEPARTMENT OF URBAN AND REGIONAL PLANNING  
M.A. PLANNING, 1996/7

INTERVIEW SCHEDULE FOR PHYSICAL PLANNERS

1. Who has the authority to prepare plans for this town?
2. How many revised plans have so far been prepared for this town since the 1971 draft plan for Mombasa?
3. What procedure do you follow in controlling development in this municipality? . . . . .
4. How effective have the Local Government Adoptive By-Laws, especially grade 2 by-laws, been in controlling and/or regulating development in this municipality? . . . . .
5. How has the existing law affected land use control especially in the free held land? . . . . .
6. How do you intend to deal with developments that have already taken place and those yet to take place without the approval of the local authority within both the free held and government land? . . . . .
7. What has the council done or intends to do to avoid the effects of high density unplanned housing developments in both private and government land? . . . . .
8. What has been the council's role in land use developments in areas tracts of land like that owned by Bamburi portland cement and Jomo Kenyatta prison among others? . . . . .
9. In the event of a developer coming up with a development proposal that does not conform with the control municipality law, how do you handle the issue? (procedure). . . . .

10. Do (the) developer(s) and the community in general recognise the legal land use control measures that affect them?
11. What are some of the problems that you face in enforcing the building regulations? . . . . .
12. What are the main land tenure systems in the municipality? . . . . .
13. Do you see any variation in the use, control, and management of land in each system? . . . . .
14. Can you estimate the percentage of this town's population which live in squatter and/or slum settlement(s)? . . . . .
15. Do you have any advisory physical development plans for any of the residential estates at present? . . . . .
16. What has been the role of the traditional/indigenous organisation in land utilisation and management? . . . . .
17. Do you believe in community/public participation in planning? (yes) [no].
18. If yes, how and at what level of planning can communities be made to participate? . . . . .
19. What do you think are the major limitations of land use regulations and control with the present planning legislation? . . . . .
20. In your opinion, how will land acquisition help in controlling development in this town? . . . . .
21. Who (besides the physical planning department and the municipal council) provides physical planning services within the Mombasa municipality? . . . . .
22. Any other.

THANK YOU.